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CONTENTS

CURRENT TOPICS: Judicial Changes—The Easter Sittings—Right of Association—"Legal" Jargon—Apportionment of Damages—Affiliation Orders and the School Leaving Age—Reforms in the Channel Islands—Standards of Fitness for Habitation—Compensation for Requisitioning and Insurance 195
CONDITIONS SUBSEQUENT IN RESTRAINT OF MARRIAGE 197
TOWN AND COUNTRY PLANNING BILL—V 199
DIVORCE LAW AND PRACTICE 200
COMPANY LAW AND PRACTICE 202
A CONVEYANCER'S DIARY 203
LANDLORD AND TENANT NOTEBOOK 204
TO-DAY AND YESTERDAY 204
COUNTY COURT LETTER 205
POINTS IN PRACTICE 205
REVIEWS 206
NOTES OF CASES—
Dunn *v.* A. G. Lockwood & Co. 207
Hudson *v.* Hudson 208
Kimber *v.* William Willett, Ltd. 206
M. W. Investments, Ltd. *v.* Kilburn Envoy, Ltd. 207
Powell *v.* Aberdale Cycle Co. 206
PARLIAMENTARY NEWS 208
RECENT LEGISLATION 209
NOTES AND NEWS 209
COURT PAPERS 210
STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES 210

CURRENT TOPICS

Judicial Changes

THE resignation by LORD WRIGHT of his office of Lord of Appeal in Ordinary, announced on 8th April, will be universally regretted. He has held this office since 1932 except for the years 1935 to 1937, when he was Master of the Rolls. His distinguished work as Chairman of the United Nations War Crimes Commission is now part of world history. At the Bar he was considered by many to be the highest living authority on commercial matters. He was called by the Inner Temple in 1900, after six years as a fellow of Trinity College, Cambridge. In 1917 he took silk, in 1923 he became a Bencher of his Inn, and in 1925 he became a judge of the King's Bench Division. We wish him many happy years of retirement. Mr. Justice MACDERMOTT, of the High Court of Justice, Northern Ireland, has been named as Lord Wright's successor in the House of Lords. The two vacancies in the Court of Appeal caused by the recent promotion of LORD OAKSEY, L.J., and MORTON, L.J., to be Lords of Appeal in Ordinary, are filled by Mr. Justice WROTTESLEY and Mr. Justice EVERSHED. The former has been a judge of the King's Bench Division since 1937 and the latter a judge of the Chancery Division since 1945. Mr. FRED EILLS PRITCHARD, K.C., has been appointed a judge of the King's Bench Division, and Mr. DAVID LLEWELLYN JENKINS, K.C., a judge of the Chancery Division. Both are below the usual age at which judges are appointed, but this is generally considered nowadays to be a good thing. It will be recalled that Mr. Justice HODSON, Mr. Justice WILLMER, Mr. Justice BYRNE, Mr. Justice WYNN PARRY, Mr. Justice DENNING and Mr. Justice EVERSHED were under fifty when appointed.

The Easter Sittings

THE lists of causes and appeals for hearing in the Supreme Court during the Easter Law Sittings, which began on Tuesday, 15th April, show general increases over the figures for the corresponding term of last year. In the King's Bench Division the total of 369 actions represents an increase of 22 over last year and 36 over the year before. Of these 126 are long non-jury actions, 232 are short non-jury actions, four are short causes, one is set down with a special jury and six are in the Commercial List. The number of witness actions in the Chancery Division is 55, compared with 18 last year and 18 the year before, and the non-witness actions number 39, as against 30 last year and 34 the year before. There are 39 retained, assigned and other matters. There are only five Admiralty actions, as against nine last year and five the year before. The first week's Divorce list shows a total of 331 causes for hearing. The undefended list contains 308 cases, and there are 23 defended cases. Appeals to the Divisional Court have more than doubled, the number this year being 218, last year 101 and 136 the year before last. There are 53 appeals in the Divisional Court list proper, 22 in the Revenue Paper and two in the Special Paper. There are also five appeals under the Housing Acts, 1925 to 1936, 115 under the Pensions Appeal Tribunals Act, 1943, 18 under the Town and Country Planning Acts, 1932 to 1944, and one under the Public Works Facilities Act, 1930. The number of appeals to the Court of Appeal has also more than doubled, being 223 this year as against 108 last year and 55 the year before last. Only six are from the Chancery Division (nine last year), but 91 come from the King's Bench Division (61 last year), 29 from the Probate, Divorce and Admiralty Division (seven last year), and 88 from county courts (23 last year), including 13 workmen's compensation appeals (four last year).

Right of Association

ONE of the human rights guaranteed by the British constitution is that of freedom of association. Wherever the common law prevails, this elementary right has received its due emphasis. In the quarter of a century since Southern Ireland was separated from the United Kingdom their paths have in many ways diverged, but many of their fundamental constitutional principles affecting individual rights remain the same. An outstanding example of this fact appears in the Reports of the *Irish Law Times* (p. 55), published on 29th March, where a case in the Supreme Court of Eire (Maguire, C.J., Murnaghan, Geoghegan, O'Byrne and Black, JJ.) dealt with the right of the citizen under the constitution of Eire to form associations and unions. The court held that an enactment which takes away the right of citizens to form associations and unions, not in themselves contrary to public order and morality, is not, under the constitution, a valid enactment, and that Pt. III of the Trade Union Act, 1941, was repugnant to the constitution. The plaintiffs were certain individuals, including the National Union of Railwaymen (a trade union registered in London) and they asked, *inter alia*, for an injunction restraining the defendants, a trade union tribunal, from hearing an application that the Irish Transport and General Workers Union be given the sole right to organise workmen as a class to negotiate conditions of employment. The Trade Union Act, 1941, was passed for two main purposes: (1) to provide for the licensing of bodies negotiating conditions of employment; and (2) to provide for the establishment of a tribunal

with power to restrict the organisation rights of trade unions. Part III of the Act enabled a trade union claiming to have organised a majority of workmen of a particular class to apply to a trade union tribunal for a determination that the applicant union shall have the sole right to organise workmen of that particular class for the purpose of negotiating conditions of employment. In the issue of the *Irish Law Times Reports* of 29th March, the judgment of Gavan Duffy, J., in the High Court is reported and, although it was reversed, it deserves close study for its acuteness, brilliance and learning.

"Legal" Jargon

Mr. DALTON should not add to the unpopularity which inevitably surrounds the office of Chancellor of the Exchequer by vilifying any section of the population. Yet that is the effect, though possibly not the calculated effect, of words like those he used in the debate in the Commons on the War Damage (Increase of Value Payments) Order, 1946, when he said: "This is an overall increase—and I apologise for all the jargon that the lawyers have accumulated around this subject." The truth is that if a lawyer dared to use the word "overall" in such a context to a judge, he would be sharply reminded to use plain English. We suspect that the word was coined either by an economist or by a civil servant, like the word "escalation" which also figures in the Hansard report of Mr. Dalton's speech, only a few lines before his strictures on legal jargon. To be fair to Mr. Dalton, he admitted that "escalation" was a terrible word and said that he had not coined it. Lawyers have to spend much time in trying to make sense out of the many official documents written by men who are trained possibly as economists but rarely as lawyers. Lawyers are generally clear and precise. They dare not leave any doubt about their meaning, whether they are addressing a judge, writing to an opposing party or framing a conveyance or a contract. Economists, on the other hand, feel an urge, as prophets do, to clothe their meaning in ambiguous and sibylline words such as, for example, "overall" and "escalation."

Apportionment of Damages

THERE is little judicial guidance as yet available on the question how liability is to be apportioned between a plaintiff and a defendant or between two defendants in running-down and other negligence actions. The tendency in this country since the passing of the Law Reform (Married Women and Joint Tortfeasors) Act, 1935, and the Law Reform (Contributory Negligence) Act, 1945, has been not to regard any decision on the amounts to be apportioned between guilty parties as a precedent. There are accordingly no reported decisions on quantum. In some States of the U.S.A., reported decisions show that a kind of "points system" has been used to apportion responsibility, one point being scored for each item of negligence. This mathematical and logical, though far from psychological approach, has not been approved here, and judges are free to follow their own methods of assessment, as if they were juries, as in effect they are on such questions. In these matters they are expected to use common sense rather than learning, just as juries are expected to do when the question directed in *Swadling* v. *Cooper* [1931] A.C.1, is put: "Who was chiefly to blame?" A Scottish case, heard by the Court of Session on 20th December, 1946 (*Drew* v. *Western S.M.T. Co., Ltd., and Others* [1947] S.L.T. 92), reported in the *Scots Law Times* for 5th April, arose out of a collision between a motor omnibus and an unlighted, stationary van during hours of partial darkness. There is, in Scotland, an Act of 1940 which corresponds to our 1935 Act, and it was held by the Court of Session in an action brought by an innocent party against the owners of the colliding vehicles that both defenders shared the blame equally. The Lord Justice-Clerk dissented and held that the omnibus driver's negligence was the sole cause of the accident. LORD MACKAY'S view was that if a court cannot allocate with precision equality of burden is indicated. We should feel more inclined to say that where there is no clear inequality of responsibility, it is only fair to divide it equally. That is all the guidance that ought to be extracted from the decision, which is primarily one of fact, but it is none the less interesting and valuable.

Affiliation Orders and the School Leaving Age

A USEFUL note is contained in Home Office Circular No. 83/1947, issued on 31st March, on the subject of affiliation orders. It states that as s. 35 of the Education Act, 1944, came into force on 1st April, 1947, it is compulsory after that date for a child to attend school until reaching the age of fifteen years. Justices, when considering the period for which an affiliation order should be made, are asked to bear this fact in mind. As regards those existing orders which are limited in duration until the child reaches fourteen years of age, the Secretary of State is advised that the circumstances arising in a particular case in consequence of the raising of the compulsory school age may constitute sufficient cause for varying the order under s. 30 (3) of the Criminal Justice Administration Act, 1914, by extending it for a further period. It is suggested that in any such case in which payments are made through the clerk to the justices an opportunity should be taken of informing the woman that it is open to her to apply to the court for the variation of the order on these grounds.

Reforms in the Channel Islands

THE proposals for constitutional and judicial reforms recently made by the States (Assemblies) of Jersey and Guernsey have now been followed by a report of a Privy Council Committee, published on 27th March (H.M. Stationery Office, Cmd. 7074, price 9d.). LORD SAMUEL, LORD AMMON, the HOME SECRETARY, Mr. R. A. BUTLER and Sir JOHN BEAUMONT were the members of the committee. The object proposed by the report is to make government more representative and up to date, and with that end in view it is proposed that the responsibility for the preparation of all legislation in Guernsey should be transferred to the States. The power of the Royal Court to legislate was abolished in 1771 in Jersey, but the Royal Court of Guernsey still has quasi-legislative functions. The limitations on the qualifications for the candidates for the twelve offices of jurats in the States should be abolished in Jersey, the report recommends, as far as the ban on certain kinds of tradesmen and the property qualifications were concerned. Jurats, originally elected primarily for judicial purposes, now have important administrative duties. In Guernsey it is proposed to substitute for jurats senators to be elected by a new electoral college. Jurats will be confined to judicial functions, but a jurat may still be a member of the States when the proposals are carried out. The report also adopts a proposal from both islands that there should be a joint Court of Appeal for the Channel Islands in both civil and criminal cases, from which there should be the right of appeal in civil cases to the Judicial Committee of the Privy Council.

Standards of Fitness for Habitation

FROM time to time we get reminders, whether in litigation or administration, of the implied obligation of the landlord in the Housing Act, 1936, that a working-class house shall be reasonably fit for habitation. There has just been published by the Central Housing Advisory Committee a report by their sub-committee on standards of fitness for habitation (H.M. Stationery Office, price 2d.) which should provide useful material for those advising tenants and landlords of working-class houses. The report quotes s. 188 (4) of the Housing Act, 1936, on the meaning of fitness: "... regard shall be had to the extent, if any, to which by reason of disrepair or sanitary defects the house falls short of the provisions of any byelaws in operation in the district or of any enactment in any local Act in operation in the district dealing with the construction and drainage of new buildings and the laying out and construction of new streets or of the general standard of housing accommodation for working classes in the district."

"Sanitary defects" are further defined in s. 188 (1) of the Act as including "lack of air space or of ventilation, darkness, dampness, absence of adequate and readily accessible water supply or sanitary accommodation or of other conveniences, and inadequate paving or drainage of courts, yards or passages." It is recommended that s. 188 (4) of the Housing Act, 1936, should be repealed and be replaced by a clause somewhat to the following effect: "For the purposes of this Act a house shall be regarded as unfit for human habitation if it is not—(i) free from serious dampness; (ii) satisfactorily lighted and ventilated; (iii) properly drained and provided with adequate sanitary conveniences and with a sink and suitable arrangements for the disposal of waste water; (iv) in good general repair; and has not (v) a satisfactory water supply; (vi) adequate washing accommodation; (vii) adequate facilities for preparing and cooking food; (viii) a well ventilated food store." In circular 61/47, issued by the Ministry of Health to housing authorities and county councils in England, on 27th March, 1947, it is stated that the Minister is in general agreement with the recommendations made by the committee, but that it would not be appropriate to introduce at the present time legislation to put the recommendation on a statutory basis, since practical effect could not be given to it under present conditions. This recommendation will, however, be sympathetically considered when further housing legislation is introduced. The report, it would seem, is mainly of interest to local authorities with regard to their housing policy at some at present indefinable future date, but it is useful also as indicating what will in the near future, it is hoped, represent a minimum standard of fitness.

Compensation for Requisitioning and Insurance

UNDER the Compensation (Defence) Act, 1939, s. 12 (2), the right to compensation is excluded in respect of any loss of or damage to property, if and so far as the claimant has become entitled, apart from the provisions of the Act, to recover any sum by way of damages or indemnity in respect of that loss or damage, or is, at the time of the occurrence of the loss or damage, required under any contract with the Crown to be insured in respect thereof. In a recent case before the General Claims Tribunal, for a full report of which we are indebted to the issue of the *Estates Gazette* for 29th March, the owner of a house described by counsel as "a very choice hunting box," claimed £15,000 under s. 2 (1) (*b*) of the Act as the cost of making good damage by fire. The fire occurred on 7th July, 1943, after the house had been requisitioned by the Army on 18th May, 1940. It had been taken over by the U.S. Air Force a few days before the fire. The claimant received £7,695 under a policy with Lloyd's underwriters. The authority, in their answer to the claim, pleaded s. 12 (2) and also claimed that the value of the property did not exceed £5,000 at the date of the requisition. The argument for the claimant was that the compensation rental was fixed on the basis that the tenant, i.e., the authority, bore the cost of the insurance, but here the policy had been kept alive by the claimant. At the time of the loss or damage the claimant was not under any contractual relationship with the Crown under which he was required to insure. In his final argument for the authority, counsel pointed out that the market for hunting lodges in 1940 was depressed, and the claimant must bear the burden of the depressed market. He asked the tribunal to say that, the claimant having claimed the full amount under the policy and having, after communication with the insurance company, accepted a lower figure, there came into being a binding agreement to pay £7,695 on a compromise basis, and therefore no compensation was payable by the authority. On the chairman being assured by counsel for the claimant that anything the tribunal awarded the claimant up to £7,695 went to the underwriters and anything above that went to the claimant, the tribunal awarded that no compensation be payable to the claimant under s. 2 (1) (*b*), and ordered him to pay the authority's taxed costs.

CONDITIONS SUBSEQUENT IN RESTRAINT OF MARRIAGE

THE most profitable cases for study by the practising lawyer are undoubtedly those which illustrate a combination of more than one legal principle. Some decisions can be succinctly summed up and given a short heading. These may be mentally pigeon-holed by the busy lawyer, perhaps noted in a reference book and, let us hope, applied at the appropriate time and place. The process is mechanical. Much more "professional joy" is to be extracted from a case which involves at least two points of law and shows the relationship between them in given circumstances. It is this relationship or interplay of principles which is the key to an important branch of the practitioner's art. The law, considered as a set of isolated points, is comparatively easy to discover. In any disputed matter there will normally be at least one such point to be advanced on each side. The task of the legal adviser is to evaluate these points in the light of the surrounding circumstances, and to strike a sort of tactical trial balance against the day when the juridical account may have to be presented for the audit of the court.

Two principles of law which have several times rubbed shoulders in the same case are those relating on the one hand to testamentary restraints of marriage, and on the other hand to the defeasance of a gift by the non-fulfilment of a condition subsequent.

Each principle has a long and distinguished ancestry in modern English law. The judgment of Lord Chancellor Thurlow in *Scott* v. *Tyler* (1788), 2 Bro. C.C. 431, whilst it recognises the prejudice of Roman, civil and canon law against any restraint of marriage whatsoever, yet adopts the points of discrimination by which the full rigour of that prejudice was modified by earlier English judges.

The judgment on the relevant part of the case—there were additional questions between the parties—deals with personal property only. It appears from the report to have been delivered over a year after the case had been argued before the Lord Chancellor, a delay which is surely reflected in its thoroughness and care. It lays down that a condition in a will imposing on the donee absolute celibacy, that is a general restraint of marriage, is invalid; though some forms of partial restraint (in the case in question an implied condition restraining marriage before the age of twenty-one without the consent of a named person) may be perfectly lawful. In so holding in the face of strenuous argument based on the civil law, Lord Thurlow was taking a step in the process of assimilating the attitude of courts of equity in regard to personalty to the common law, which, in regard to its own provinces of realty and specialty contracts, looked at the matter on broad lines of public policy, requiring that a restraint to be good must be reasonable. We shall see presently that this process of assimilation has been carried to the point of a Chancery judge, in a case raising the question of a restraining condition affecting personalty, basing his decision frankly on grounds of public policy (Russell, J., in *Re Lanyon, infra*).

That this part of our law is well settled in broad outline is perhaps best indicated by the fact that no case on restraint of marriage alone seems to have troubled the House of Lords. Lord Atkin's words, to be found in [1943] A.C., at p. 325, are also expressive of the position: "For my own part I view with disfavour the power of testators to control from their grave the choice in marriage of their beneficiaries, and should not be dismayed if the power were to disappear." Notwithstanding his disapproval, Lord Atkin and the other noble lords could not dispose of the case in question (*Clayton* v. *Ramsden*) (and it does not appear to have been argued that

they could) by denying the validity as such of the partial restraint imposed by the testator in that case (see *infra*).

The other principle mentioned earlier in this article was described by Lord Cranworth in the leading case of *Clavering* v. *Ellison* (1859), 7 H.L. Cas. 707, as " from the earliest times, one of the cardinal rules " on the subject of conditions subsequent. He put it thus : " That where a vested estate is to be defeated by a condition on a contingency that is to happen afterwards, that condition must be such that the court can see from the beginning, precisely and distinctly, upon the happening of what event it was that the preceding vested estate was to determine."

Clavering v. *Ellison* contained no direct element of restraint of marriage, and its facts are not material to be considered here. Nevertheless it is interesting to observe that it was parental disapproval of an only son's marriage partner which gave rise to the question at issue. Incidentally, the report contains interesting references to a decree of Napoleon issued in May, 1803, making all Englishmen between eighteen and sixty years of age then in France prisoners of war. The present writer freely confesses that he had been ignorant of the existence of this particular precedent for reg. 18B !

In *Re Lanyon* [1927] 2 Ch. 264, the two principles with which this article is concerned were both debated. The testator gave his son for life the income of his residuary estate and directed that upon the son's death the capital should be payable to the son's child or children. This last direction was, however, accompanied by a proviso : " provided he (the testator's son) does not marry a relation by blood, as I wish to mark my great objection to marriage between blood relations." And there followed a gift over of the capital in the event of the son not leaving a child who attained twenty-one or in the event of the son marrying a blood relation.

There are some unusual features in the case. In the first place, the forbidden marriage had not happened at the time when the case came up for decision. The son was then a bachelor of thirty-seven and merely wished to know where he stood. Moreover, the forfeiture was aimed not at the life interest of the son, but at the residuary interest of the son's children. Assuming the condition were a valid one, a prohibited marriage would leave the son, the actual violator, in the same position as before.

The condition was attacked on two grounds. The opening argument for the son sought to prove it void for uncertainty. Russell, J., however, rejected this view of the matter. Though there would be difficulty in ascertaining whether the contemplated event had occurred—the son could never be sure that his bride was not in fact a blood relation in the sense of someone with an ancestor in common—his lordship saw no difficulty in defining what that event was. Basing himself on *Clavering* v. *Ellison*, the learned judge disposed of this part of the argument in these words : " In my opinion, although uncertainty as to what is the prescribed event upon which a defeasance is to occur will avoid the provision for defeasance, it is impossible to hold that because it may be uncertain from time to time whether a clearly defined event has or has not occurred, the provision is void."

But a second and broader-based objection to the validity of the proviso had been put forward in reply to the arguments of counsel for the residuary legatees. This was that the defeasance clause was void on grounds of public policy as being in restraint of marriage. Acceding to this objection, Russell, J., said : " In my opinion all partial restraints of marriage are not necessarily valid because they are partial only. It is not enough to say that a particular restraint is not a general restraint, but leaves open a field of choice and is therefore valid. Considerations of public policy require more than that. It still remains to be considered in each case whether the particular restraint is reasonable—reasonable, that is to say, from the point of view of public policy. A restraint which, although in terms partial, from its nature would or might lead in practice to a probable prohibition of marriage would, in my opinion, fall within the mischief which public policy requires should be prevented." His lordship found support for his view in an old Irish parliamentary case, *Keily* v. *Monck* (1795), 3 Ridg. P.C. 205, in which a provision had been held void which restricted a beneficiary's choice of husband to a person " seised of an estate in fee or of a freehold perpetual of the clear yearly value of £500 sterling." Russell, J., said that the son (in the *Lanyon* case) could only be certain that he *was* marrying a blood relation—never that he was not. The effect of a provision which produced those results was, his lordship thought, to lead to the probable prohibition of marriage and the provision was accordingly void.

There has been a run of cases in recent years in which testators of the Jewish persuasion (to adopt an expression hallowed by statute—Ballot Act, 1872) have sought to compel a beneficiary, in the words of Lord Romer, " to act or refrain from acting in matters concerned with religion, not in accordance with the dictates of his own conscience, but in accordance with the religious convictions of the testator himself." In each case, the testator having granted to a beneficiary an estate in personalty has sought to divest that estate in the event of the beneficiary marrying a gentile.

That such a forfeiture clause may be valid as a condition subsequent has been clear since the case of *Hodgson* v. *Halford* (1879), 11 Ch. D. 959. But the condition there was carefully drawn to operate on marriage with " a person who does not profess the Jewish religion, or . . . a person not born a Jew although converted to Judaism." This wording clearly meets Lord Cranworth's requirement of certainty.

Not so, however, the wording in other cases. In three cases in the present decade the courts have had to construe a requirement that a husband should be " of the Jewish faith." The whole condition of forfeiture in *Re Blaiberg* [1940] Ch. 385, was based on this requirement, and Morton, J., held that it was void for uncertainty.

On the other hand, in *Clayton* v. *Ramsden*, *supra*, the reference to Jewish faith formed only one " limb " of a double condition. There the testator had by his will settled a pecuniary legacy and a share of residue upon his unmarried daughter and her issue. A later clause read " Notwithstanding anything hereinbefore contained, I declare that if my said daughter shall at any time after my death contract a marriage with a person who is not of Jewish parentage and of the Jewish faith then, as from the date of such marriage," the trusts in favour of her and her issue should determine and the will should operate as if she had died at the date of the marriage. This wording set a preliminary question of construction, in answer to which the House of Lords held that the words " who is not of Jewish parentage and of the Jewish faith " formed one composite condition which was void as a whole if either limb were void. The subsequent conclusions of all the noble lords were based on their holding that the first limb was void, so that the requirement of " Jewish faith " did not fall for discussion in any decisive sense. Nevertheless there were important dicta on these words which we shall have occasion to notice presently.

But the case raised another preliminary problem of construction which, in the result, proved crucial in the interpretation of the first limb of the condition. " Jewish parentage " might have reference to the race of a potential husband or to the religion of his parents. It was precisely in the construction of these words that the vital difference lay between the Court of Appeal and the House of Lords. Lord Greene, M.R. ([1942] Ch. 1, at p. 15) had construed them as referring to the religion of both the husband's parents at the time of his birth. The Master of the Rolls had relied on the words " of the Jewish faith " occurring in the second limb as showing that when framing the whole condition the testator had been thinking of the Jewish religion, and that he had merely started a generation back, so to speak, in his stipulation as to religion. The House of Lords unanimously adopted the opposite construction. They held in effect that the two limbs, though, as we have seen, part of one composite condition, were contrasted in meaning, the first referring to race and the second to religion or faith.

Having held that "of Jewish parentage" meant Jewish by race, Lord Romer proceeded to apply to the first part of the condition the test of *Clavering* v. *Ellison*. "What then," he asked (p. 333), "did the testator mean by the stipulation that the daughter's husband was to be of Jewish race or descent? It cannot reasonably be supposed that the husband was to show an unbroken line of descent from the patriarch Jacob. If the daughter were compelled to wait for such a husband she would remain a spinster all her life, and the condition would be void as amounting to a total restraint on marriage. It seems far more probable that the testator meant no more than that the husband should be of Hebraic blood. But what degree of Hebraic blood would a permissible husband have to possess?" Lord Romer, observing that the testator had furnished no answer to this question, concluded that it was thus impossible for the court to see from the beginning precisely or distinctly on the happening of what event the daughter's vested interests were to determine, and that the condition was therefore void for uncertainty. On this point all the other speeches in the House of Lords were in agreement.

It was in *Re Donn* [1944] Ch. 8, that a vital part was played by the dicta which had fallen from the noble lords in *Clayton* v. *Ramsden* on the meaning of the words "of Jewish faith." As the headnote to the latter case in the official reports indicates, a division of opinion between the majority of their lordships and Lord Wright was disclosed in these dicta. While Lord Wright expressly disclaimed any final opinion on the words "of Jewish faith," he did indicate that he was not impressed by the contention that the words referred to a state of mind or of religious conviction which was incapable of proof. "States of mind are capable of proof like other matters of fact . . . I do not understand that the rule in *Clavering* v. *Ellison* deals with questions of proof, but solely with the clearness and distinctness of the language used in the clause, that is, its capability of defining precisely a specific state of fact." In an interesting passage (p. 331) referring to the possible varieties of Christian belief—"There are many mansions, but they are all included in one house"—his lordship explains why he is disposed to regard "of Jewish faith" as equally clear and distinct as the expression "of Christian faith."

Lord Romer's views on this point are plainly expressed at p. 334. Like the earlier, decisive question of Jewish parentage, the question whether a man is of the Jewish faith was, in his Lordship's opinion, one of degree. The testator had not indicated what degree of faith in the daughter's husband was required to avoid or bring on the forfeiture, and if that condition had stood alone, Lord Romer would have held it void for uncertainty.

In the 1944 case (*Re Donn*), Uthwatt, J., as he then was, had yet another form of words to construe. The testator had provided that if any child of his should marry a person not of the Jewish faith or a person whose parents were not at the time of his or her birth of the Jewish faith or a person who had previously to the marriage been of any faith other than the Jewish faith, there should be a forfeiture and a gift over of one-half the income of the share of the child so marrying.

This clause amounted to a condition subsequent, which stood or fell by the test in *Clavering* v. *Ellison*. The crucial words were again "of the Jewish faith," and in his judgment the learned judge accepted the view of Lord Romer and applied the majority dicta in *Clayton* v. *Ramsden*. It followed that the condition was void for uncertainty, and one more attempt at a testamentary restraint of marriage had failed.

TOWN AND COUNTRY PLANNING BILL—V

In the last article (91 Sol. J. 168) the provisions of the Bill with regard to compensation were classified under five heads, and head 1 was dealt with in some detail. The remaining heads 2 to 5 now fall to be considered.

2. By cl. 17, where development permission is refused, or is granted subject to conditions, the owner may serve a purchase notice on the county borough or county district council requiring the council to purchase his interest. This right is only given where the owner claims—

(*a*) (i) that the land has become incapable of reasonably beneficial use in its existing state, or

(ii) that it cannot be made capable of reasonably beneficial use by carrying out the development permitted in accordance with the conditions imposed;

and

(*b*) that it cannot be rendered capable of any reasonably beneficial use by carrying out any other development for which permission has been or would be granted.

The council has to send a copy of the purchase notice to the Minister who, if satisfied that the above situation exists, may—

(*a*) confirm the notice, in which case the council are bound to acquire the land as if they had served a notice to treat on a date to be specified by the Minister, or

(*b*) grant the permission which was refused or revoke or modify any conditions, or

(*c*) direct permission to be granted for other development which would render the land capable of reasonably beneficial use.

Provision is made for an inquiry by a person appointed by the Minister, where required.

If the Minister adopts course (*c*) then the owner may claim compensation under cl. 18 equal to the difference between the value of his land assuming that no development other than that included in the Minister's direction will be permitted, and the value assuming that no development other than that specified in Sched. III will be permitted, where the former is the lesser, the difference being calculated by reference to the 1939 price ceiling and supplements.

3. By cl. 18, where an application for development of any of the classes (except Class 1) specified in Sched. III is refused by the Minister on reference to him or on appeal, or is granted subject to conditions, then if the interest of any person in the land is depreciated by the refusal or conditions the local planning authority must pay compensation for the depreciation. The compensation is to be assessed as if it were compensation under s. 68 of the Lands Clauses Consolidation Act, 1845, for injurious affection and by reference to the provisions of the Town and Country Planning Act, 1944, imposing the 1939 price ceiling plus the usual supplements under this Act where applicable (Sched. IV, paras. 1 and 2). A mortgagee as well as a mortgagor may make a claim in respect of property affected, and the compensation may be paid by the local planning authority to such of the claimants as they think proper, and must be applied by that claimant in such manner as the interested parties agree, or in default of agreement as may be determined by arbitration (Sched. IV, para. 5). This point might well be dealt with in any mortgage deed to ensure payment to the mortgagee if the authority should pay to the mortgagor.

For the purpose of assessing compensation under this clause the Minister, if he thinks it reasonable, may direct that conditions for regulating the design or external appearance, or the size or height of buildings, or the number of buildings to be erected on land may be disregarded wholly or partly.

In the debate on this clause in committee, the Minister promised to review the wording of the clause in case it did not carry out the intention, which appears to be to give compensation equal to the difference between the value subject to the refusal and the value if the application had been granted. The Minister further stated that any escalation of the 1939 values applicable to compulsory purchase would apply to this compensation also.

4. By cl. 19 a local planning authority may, by order to be confirmed by the Minister, revoke or modify a development permission at any time before the building or other operations permitted have been completed or the change of use has taken place. In such a case by cl. 20 the authority must pay

compensation for abortive expenditure or for any sum reasonably incurred by the claimant in discharge of any liability arising out of the abandonment of a contract. The revocation or modification may also have the effect of bringing into play the provisions of cll. 17 and 18, where applicable, but the compensation payable under these clauses will be reduced by the amount received under cl. 20. Provision is also made by cl. 66 (2) and (3) for any development charge to cease to have effect or be repaid. The Minister in committee agreed to have another look at cl. 20 with a view to ensuring that an owner will be no worse and no better off than he would have been if the application had been refused in the first instance.

5. By cl. 23 the local planning authority may, by order to be confirmed by the Minister, require the discontinuance of any use of land or the alteration or removal of any buildings or other works if they think it is expedient in the interests of proper planning. The building or use may be in existence quite lawfully. By cl. 24 in such a case the authority must pay compensation, assessed in accordance with Sched. IV as before mentioned, in respect of depreciation caused by the order and for any injury caused to any trade, business or profession carried on by the claimant on the land and any expenses reasonably incurred in complying with the order. The Minister in committee agreed to put down words amending the clause to meet a case where a person might suffer a trade loss without suffering any loss in respect of the value of the land, and he was also prepared to consider the insertion of words requiring other accommodation to be provided in a case where residential accommodation was affected. The result of a cl. 23 order may bring cl. 17 into play, but if advantage is taken of this no compensation is payable under cl. 24.

Action under cl. 23 may in many cases be almost tantamount to compulsory purchase, which will be discussed in the next article, but mention may be made here of a practical case of very frequent occurrence to-day. A developer is granted after the appointed day a development permission subject to a condition requiring him to construct a service road. Under present law, if such a condition is imposed on a consent under the Restriction of Ribbon Development Act, 1935, the developer may be able to recover as compensation a large part of the cost of the service road. Under the Bill he will receive no compensation, though in rare cases he may be within cl. 17, but possibly expenditure of this nature will be taken into account in assessing the development charge, and some relief in the case of conditional consents may be looked for in this direction.

The compensation sections, as might have been expected, are among the most complicated in the Bill, and in such a short summary it is not possible to give a full picture of all their details, for which the reader is referred to the Bill itself.

Special Treatment for "Near Ripe" Land

An announcement made by the Minister in Committee with regard to the special treatment proposed for "near ripe" land deserves attention.

In the first article (91 Sol. J. 98) it was pointed out that in the case of land ripe for development, where development is permitted on application under the Bill or is deemed to be permitted by the Bill, the Minister, by cl. 75, might direct that no payment of compensation should be made for depreciation and no development charge should be payable for the development, but that land was only ripe for this purpose when its development value was wholly or mainly attributable on the appointed day to the prospects of the development permitted and either—

(*a*) a building contract for that development, or

(*b*) a submission of plans for approval under local bye-laws or other enactment

had been made within ten years before the 7th January, 1947.

It was pointed out that these limitations excluded from this special treatment large areas of land which in the popular sense would be termed ripe for development.

The Minister does not propose to widen these qualifications, but to allow special treatment to two classes of persons :—

(*a*) building developers having land in their ownership at the date of publication of the Bill on which they hope to build ;

(*b*) other persons having in their ownership land on which they propose to build for their own occupation, e.g., a private individual proposing to build a house to live in, or a manufacturer proposing to build an additional factory.

It was suggested previously that normally the compensation for depreciation will by no means equal the development charge payable in respect of the same land. The special treatment to be given to the above classes will in effect result in the compensation payable out of the £300,000,000 to them being related to the full or nearly full development value, within limitations, and thus they will not have to pay a development charge greatly, if at all, in excess of the compensation payment.

In the case of class (*a*), a building developer will be asked to provide evidence as to the rate at which he was building over some suitable pre-war period, say 1934-39. An estimate will then be made of the amount of land needed for such a five years' programme, and on that amount of his land he will receive a payment out of the £300,000,000 equal to the development value, the remainder of his land being left to rank as a normal case.

In the case of class (*b*), the concession will be limited to persons who begin their projected building on or before 7th January, 1952.

The details remain to be worked out, and will be dealt with by regulations and the scheme to be made by the Treasury and not incorporated in the Bill.

While this treatment will afford satisfaction to those entitled to it, it can hardly be looked upon with equanimity by other owners who hope to receive a payment out of the £300,000,000, for it must inevitably decrease very considerably the amount available for them.

DIVORCE LAW AND PRACTICE

MATRIMONIAL CAUSES RULES, 1947

As mentioned in a previous issue (91 Sol. J. 165) the new Matrimonial Causes Rules, 1947 (S.R. & O., 1947, No. 523/L.9, price 11d. net), dated 25th March, 1947, have now been published, and these give effect to recommendations made in the Second Interim and Final Reports of the Denning Committee, revoking and consolidating with amendments the Matrimonial Causes Rules, 1944, and their amending Rules.

While, of course, to a large extent they re-enact the existing provisions, many changes have been made in the present Rules with their various amendments, and although it is not possible in this short review to deal with them all, it is intended to draw attention to the more important ones, showing the present position in relation to the particular subject-matter concerned.

1. *Commencement of the Rules.*—The Rules come into force on the 1st May, 1947 (r. 1 (1)).

2. *Applications for leave to present a petition.*—In the case of such applications certain changes have been made. It is now provided that when the summons is issued it shall be made returnable for a fixed date before a judge in chambers (r. 2 (3)), and unless otherwise directed the summons shall be served on the respondent at least five clear days before the return date (r. 2 (4)), and no appearance need be entered to the summons, and no affidavit need be filed in reply, and the intended respondent may be heard without entering appearance (r. 2 (5)).

3. *Form of petition and affidavit.*—It is in the form of the petition and affidavit in support (rr. 4 and 6) that the most

important procedural changes have been made, and it is proposed to deal with them in this order, indicating what parts remain unchanged and what new matter is now required to be included.

A. As regards the petition (except a suit for jactitation of marriage) certain of the contents as previously ordered remain the same. Thus there is no change in the reference to the place and date of the marriage (r. 4 (1) (*a*)), the addresses of cohabitation (r. 4 (1) (*b*)), the occupation of the husband and the residence and domicil of the parties (r. 4 (1) (*d*)), the reference to the desertion of the wife by the husband, or his deportation (r. 4 (1) (*e*)), the reference to any previous proceedings (r. 4 (1) (*f*)), and restitution petitions (r. 4 (1) (*i*)).

In the new paragraphs of the petition, however, are now included many statements which were previously contained in the affidavit, and these are as follows.

Whether there are living any children of the marriage, and if so the names and dates of birth or ages of such children and, in the case of any child under sixteen years of age, short particulars of its past, present and proposed homes, maintenance and education and, if it be the case, that the parentage of any living child of the wife born during the marriage is in dispute (r. 4 (1) (*c*)).

The matrimoialn offences alleged or other grounds upon which relief is sought, setting out with sufficient particularity the individual facts relied on, but not the evidence by which they are sought to be proved, and, if such be the case, that any person with whom adultery or sodomy is alleged to have been committed has died before the presentation of the petition (r. 4 (1) (*g*)).

In the case of a petition for presumption of death and dissolution of marriage, the last place of cohabitation of the parties, the circumstances in which the parties ceased to cohabit, the date when and the place where the respondent was last seen or heard of and the steps which have been taken to trace the respondent (r. 4 (1) (*h*)).

Where adultery is alleged, whether the petitioner has in any way been accessory to, or connived at or condoned the adultery, and where the ground is cruelty, whether the petitioner has condoned the cruelty (r. 4 (1) (*j*)).

In the case of a petition for nullity under s 7 (1) (*b*), (*c*) or (*d*) of the Act of 1937, whether the petitioner was at the time of the marriage ignorant of the facts alleged and whether marital intercourse with the consent of the petitioner has taken place since the discovery by the petitioner of the existence of grounds for a decree (r. 4 (1) (*k*)).

Whether (except in the case of a petition for restitution of conjugal rights) the petition is presented or prosecuted in collusion with the respondent or any of the co-respondents (r. 4 (1) (*l*)).

In the case of a petition for divorce or nullity of marriage under s. 1 of the Matrimonial Causes (War Marriages) Act, 1944, a new para. (iv) has been added, namely, whether to the knowledge of the petitioner proceedings for the dissolution or nullity of the marriage or judicial separation or restitution of conjugal rights or for other relief in respect of the marriage are pending in any other country, and, if so, the nature of those proceedings (r. 4 (1) (*m*)).

A wife petitioner may include in her petition a claim for alimony pending suit, maintenance of the children, maintenance or a secured provision, in which case the petition shall contain a statement in general terms of her husband's income and property in so far as they are within her knowledge or belief (r. 4 (2)).

With regard to the prayer, this should set out the relief claimed, including (*a*) the amount of any claim for damages, (*b*) any claim for custody of the children, (*c*) any claim for maintenance of the children, (*d*) any claim for alimony pending suit, (*e*) any claim for maintenance or a secured provision, (*f*) any claim for costs, and (*g*) a prayer for the exercise of discretion (r. 4 (3)).

With regard to the signing of the petition, if settled by counsel it shall be signed by him, or if not settled by counsel shall be signed by the solicitor for the petitioner, or by the petitioner if he is acting in person (r. 4 (5)), and provision is made for the entry of an address for service of the solicitor, or the petitioner if acting in person (r. 4 (6), (7)).

With regard to a petition for jactitation of marriage there is no change in the form of the petition under the Rules of 1944 (r. 4 (4)).

B. As regards the affidavit in support, it is now provided that every petition shall be supported by an affidavit by the petitioner verifying the facts of which the deponent has personal cognizance and deposing as to belief in the truth of the other facts (r. 6 (1)). Where the petition contains an allegation of desertion without cause for a period of at least three years immediately preceding the presentation of the petition, this Rule shall be deemed to be complied with if the affidavit is sworn not more than fourteen days before the petition is filed or such longer time as may be allowed by the Registrar, having regard to the circumstances of the case (r. 6 (2)). The affidavit in support of the petition shall be contained in the same document as the petition and shall follow at the foot or end thereof (r. 6 (3)).

4. *Notice to appear.*—The forms of the notice to appear (Form 3), and of the memorandum of appearance (Forms 5–7) have been altered in order to draw the attention of the respondent or co-respondent to the charges made against him or her in the petition, and to indicate the steps which may be taken to defend the suit or otherwise (r. 7).

5. *Service of petition.*—A new departure from the previous rules has been made by the provisions in r. 8 allowing service by registered post of a copy of every petition, or originating summons, and every notice of an application for ancillary relief.

6. *Interveners.*—The provisions with regard to the service of a copy of the petition upon a person charged with adultery in the petition where he has not been made either a respondent or a co-respondent have now been extended to include the case of such a person who is charged with sodomy (r. 15).

7. *Evidence in support of answer.*—The provisions made by r. 4 (1) (*j*) or (*l*), *supra*, with regard to the contents of the petition, are applied also to the contents of every answer or subsequent pleading which contains other than a simple denial of the facts stated in the petition or answer, where the person filing the answer or subsequent pleading is the husband or wife, and the answer or subsequent pleading shall be supported by affidavit as set out in r. 6, *supra* (r. 17 (1)).

8. *Decree absolute.*—A radical change has now taken place in the procedure to make absolute a decree *nisi*. Hitherto the decree absolute has been pronounced in open court, but in future the application will be made by the spouse lodging in the Registry where the cause is proceeding the appropriate notice of application on any day after the expiration of the period prescribed for making such decree absolute, and, the Registrar having searched the court minutes and being satisfied that no appeal against the decree is pending, and that no appearance has been entered or affidavit filed by or on behalf of any person wishing to show cause against the decree being made absolute, the notice shall be filed, provision being made to meet the case where the application is made after the expiration of one year from the date of the decree *nisi* (r. 40 (1)), and upon the filing of the notice the decree *nisi* shall become absolute (r. 40 (2)). Provision is made for an application to be made by a spouse to make absolute a decree *nisi* pronounced against him (r. 40 (3)), and a certificate bearing the seal of the Registry in accordance with the appropriate form that the decree has been made absolute shall be prepared and filed by the Registrar (r. 40 (4)).

9. *Revocation of Rules and Orders.*—The Matrimonial Causes Rules, 1944, and certain of the amending Rules and Orders as set out in Appendix IV are revoked, and provision is made for the new Rules in their application to matrimonial causes and matters pending on the 1st May, 1947, to have effect subject to such directions as the Judge or a Registrar may in any particular case think fit to give (r. 83).

COMPANY LAW AND PRACTICE

MODIFICATION OF CLASS RIGHTS

IT is not usually considered desirable to set out in a company's memorandum of association the rights attached to different classes of shares: changing circumstances may well necessitate the reorganisation from time to time of the company's capital structure, and such reorganisation will commonly involve a modification of the rights carried by the different classes of shares; and if those rights are contained in the memorandum, and the memorandum makes no provision for modifying them, then they cannot be altered by the company except as part of a scheme of arrangement with the shareholders concerned under s. 153 of the Companies Act, 1929. A scheme of arrangement involves, of course, an application to the court, and the matter cannot be carried through very speedily or without expense. The reason why rights attached to a class of shares by the memorandum cannot be altered by the company by any domestic machinery is that the provisions conferring the rights are conditions within the meaning of s. 4 of the Companies Act, which provides that a company may not alter the conditions contained in its memorandum (except in certain cases which are not material to the point under consideration). The authority for this is the well-known decision of the Court of Appeal in *Ashbury* v. *Watson* (1885), 30 Ch. D. 376, where it was held that the word "conditions" in the section of the Act is not limited in its meaning to provisions which the Act requires to be inserted in the memorandum; if provisions which the Act does not require are included and those provisions are part of the company's constitution they are conditions within the meaning of s. 4 and consequently unalterable. But if the memorandum includes provisions of this kind defining the rights of different classes of shares, and among those provisions is a clause enabling those rights to be varied by a specified procedure, then they can be altered in accordance with that procedure: see *Re Welsbach Gas Light Co., Ltd.* [1904] 1 Ch. 87, where the memorandum, after setting out the rights of the different shares, provided that such rights might be modified in the manner mentioned in the accompanying articles, and the articles provided for modification with the consent of the holders of two-thirds of the issued shares of the class affected. Of such provisions Romer, L.J., said this: "The rights and privileges of the different classes of shares *inter se* constitute a matter not specially provided for by the Legislature. There is no reason why those rights and privileges should not be altered from time to time, or why the alteration should not be duly provided for. Such a provision is not like one concerning the objects of the company . . . These matters, as is provided [by the Act], must be fixed by the memorandum of association; they must be specified in the memorandum of association and cannot afterwards be changed at the will of the company. But there is no legislative provision as to the rights and privileges of the different classes of shareholders *inter se*, and the company may properly provide for any modifications of those rights and privileges by either the articles or the memorandum."

The result of the decisions in *Ashbury* v. *Watson* and the *Welsbach* case is clear and straightforward enough, but there is a position which one might describe as halfway between the facts in those two cases, on which, so far as I am aware, there is no binding authority. Suppose the memorandum specifies the rights attached to a class of shares and is silent as to the modification of those rights, but the contemporaneous articles of association contain a provision enabling the rights of a class to be modified with the consent of a specified majority of the shareholders of that class. So far as the memorandum is concerned, the case is on all fours with *Ashbury* v. *Watson*, and on the authority of that decision the rights cannot be altered by the machinery provided by the articles; the *Welsbach* case is not in point, since there it was the memorandum itself which contained the machinery for altering the rights, so that on the face of the memorandum those rights were not absolute but were subject to alteration. At first sight, it would seem that in the case I have suggested the matter is concluded by *Ashbury* v. *Watson*; but if this is right, then, as will be seen, the result is that no effect at all is given to the provision for modification contained in the articles. The point has, in fact, been the subject of a decision in a Scottish case, *Re Marshall, Fleming & Co.* [1938] S.C. 873, where the memorandum set out the rights of preference shares, and the original articles, filed contemporaneously with the memorandum, contained a clause, very similar to cl. 3 of the 1929 Table A, providing for the variation of class rights. Lord Keith, after a review of the English cases, held that the rights contained in the memorandum could be altered in accordance with the variation of rights article; and he observed that "where memorandum and articles of association are issued contemporaneously and the articles contain power to alter the rights of shareholders as set forth in the memorandum, there is no room for doubt as to the intention. To refuse any effect to the articles in question is to treat them as *pro non scriptis*, not because they are *ultra vires*, but because they have not been linked up with the memorandum by appropriate language." The opposite view would, no doubt, involve this result, that the variation provisions of the articles have no significance or application; but though this may be unsatisfactory, I doubt if it forms a very strong argument for the view which Lord Keith adopted. It seems to me that the decision in *Ashbury* v. *Watson* would make it difficult for an English court to follow the Scottish case and hold that rights unequivocally attached to shares by provisions in the memorandum can be altered pursuant to a variation of rights article unless, as in the *Welsbach* case, the memorandum itself expressly authorises such alteration. It is true that contemporaneous articles can be referred to and read with the memorandum for purposes of construction where the memorandum is ambiguous—on points, that is, which the Act does not require to be stated in the memorandum—but no ambiguity or doubt arises as to the unalterability of share rights stated in a memorandum; as we have seen, the effect of the Act is to make those rights unalterable because they are conditions in the memorandum, and if it is permissible in this case to take into account a variation of rights article, the effect is that you no longer treat the provisions of the memorandum as conditions and are therefore recognising, in effect, that the articles can override the memorandum; and this they cannot do: see *Andrews* v. *Gas Meter Co.* [1897] 1 Ch. 361, at p. 369.

In my view, therefore, it would be unsafe for a company, the memorandum of which specifies the rights attached to different classes of shares, to modify those rights in accordance with a variation of rights article, in reliance on the decision in *Re Marshall, Fleming & Co.* So far as I am aware, there is no direct English authority on the point, and until an English court has decided the matter in the same way, it is at the least prudent to effect any desired modification by means of a scheme of arrangement under s. 153 of the Act.

Another point which sometimes arises in regard to share rights which are determined by the memorandum of association and consequently unalterable by the company, is whether if *all* the holders of the shares concerned agree to the alteration it can be validly effected without the necessity of going to the court under s. 153. Again, I do not know of any direct authority on the point: it was adverted to, but not decided, by the Court of Appeal in *Ashbury* v. *Watson*. It seems to me that even with the consent of all the shareholders concerned the rights cannot in such a case be validly altered; no doubt those shareholders could validly bind themselves to accept the new rights in lieu of the old and could not thenceforth claim the old rights, but this would be no more than a matter of personal contract and would not affect the proprietary rights attached to the shares by the memorandum; and a transferee of the shares could claim the rights which the memorandum conferred as he would not be affected by the

personal contract of his transferor. To allow consent or agreement to effect an alteration of the rights attached to the shares, as opposed to the personal rights of the person holding the shares and so consenting or agreeing, would be to recognise an alteration of conditions contained in the memorandum, in a manner not authorised by the Act.

I have been concerned in this article with alteration of class rights which are specified in the memorandum of association; the questions which arise where the rights are set out in the articles are of a quite different nature, and consideration of this class of case must be deferred to a subsequent article.

A CONVEYANCER'S DIARY

SETTLED LAND

THE system created by the Settled Land Act, 1925, is technical and artificial, and the Act does not always prescribe penalties for its non-observance. Accordingly, it is as well sometimes to refresh our memories as to the details of the system, from which all of us too often deviate. It is best to be right, even though a wrong instrument may be effective.

The underlying idea of the Act is, of course, that the legal estate should at all times be dealt with separately from the equities. Hence, it is enacted by s. 4 that every settlement *inter vivos* shall be effected by two deeds, " namely, a vesting deed and a trust instrument, and if effected in any other way shall not operate to transfer or create a legal estate." The section then goes on to provide that by the vesting deed the legal estate shall be conveyed to the tenant for life, or, if such estate is already vested in him, that fact shall be declared by the vesting deed. The trust instrument is to declare the trusts, constitute the trustees and provide for the appointment of new trustees, and set out the additional powers (if any). Section 5 declares what matters are to be included in the vesting deed; however much one may think one knows the contents of this section, I recommend a quick reading of it before every occasion when one sits down to draft a vesting deed, since the result of giving the wrong sort of information or of omitting any particular class of information seems to be that the document is not a vesting deed at all. To be a vesting deed, an instrument must comply with s. 5. The section provides that the deed is not invalid if the information, though of the right sort, is in fact inaccurate.

Now, if the settlement is created by the will of an estate owner who dies after 1925, the position is regulated by s. 6; the will is the trust instrument. The legal estate will first go to the testator's personal representative by virtue of the grant. Under s. 6 (*b*) he " shall hold the settled land on trust, if and when required so to do, to convey it to the person who, under the will, or by virtue of this Act, is the tenant for life or statutory owner, and, if more than one, as joint tenants." The instrument required for this purpose is either a principal vesting deed or a vesting assent: see s. 8 (4). A vesting assent has to contain the same particulars as a principal vesting deed; the only practical difference is that a principal vesting deed requires a 10s. stamp, while a vesting assent requires no stamp. This term " vesting assent " is also correctly used of the instrument whereby a new tenant for life acquires the legal estate from the special personal representatives of a former tenant for life. Indeed, according to the Settled Land Act, 1925, s. 117 (1) (xxxi), the last-mentioned is the only correct usage of the phrase; but I think that s. 8 (4) must override s. 117 (1) (xxxi). The phrase is frequently used in other senses in practice, where the correct term is simply " assent." For instance, one frequently finds an assent on trust for sale described as a vesting assent. This usage is wrong; the only two correct usages are as stated above.

Once the legal estate has been the subject of a vesting deed or vesting assent title can only be made under the Settled Land Act, unless and until the land is duly discharged therefrom. A discharge normally comes about when the tenant for life dies and someone becomes absolutely entitled or entitled on trust for sale. Either of those events puts an end to the settlement, with the consequence that the legal estate vests in the general personal representatives of the tenant for life: *Re Bridgett and Hayes' Contract* [1928] Ch. 163. Alternatively, the settlement may come to an end through some person other than the tenant for life or statutory owner becoming absolutely entitled. In that event the person concerned is entitled to call for a conveyance of the legal estate to him (s. 7 (5)). The consequence will then be that the new estate owner will hold the land free from all equities arising under the trust instrument; the only remaining step is for the trustees of the settlement to execute a deed of discharge declaring that they are discharged from their trust (s. 17). Deeds of discharge are unusual and tend to be forgotten. Sometimes the tenant for life himself becomes absolutely entitled; for instance, if he has an ultimate interest in fee simple under the trust instrument and all the interests between his life estate and that ultimate interest fail. In that case there is, of course, no need for a conveyance of the legal estate, and the only step requisite to enable him to make title as a beneficial owner is for the trustees to execute a deed of discharge. Sometimes the trusts of the trust instrument come to an end, but the trustees have notice of a derivative settlement. In that case s. 17 requires them to transfer the legal estate so as to give effect to the derivative settlement before executing the deed of discharge in respect of the prior settlement. I apprehend that if they did not execute a deed of discharge in such a case the prior settlement would stay on the title and would become part of a compound settlement including also the derivative settlement. Deeds of discharge declare the cesser of the trusts, but they are part of the machinery for dealing with the legal estate; they should therefore be expressed to be supplemental to the vesting instrument and not to the trust instrument.

Two other sorts of document under the Settled Land Act seem to be misunderstood. First, there are subsidiary vesting deeds. The document to be executed to give initial effect to the settlement, so far as the legal estate is concerned, is a vesting assent or a principal vesting deed, either of which can be described as the principal vesting instrument. But, by s. 117 (1) (xxxi) this last expression is declared not to include a subsidiary vesting deed. Under s. 10 of the Act it is provided that if land is acquired with capital money or in exchange for settled land, the acquired land is to be " conveyed to . . . the tenant for life or statutory owner, and such conveyance . . . is in this Act referred to as a subsidiary vesting deed." Such a document should accordingly begin with the words: " This subsidiary vesting deed is made," etc., not: " This conveyance is made," etc. A subsidiary vesting deed must contain particulars of the principal vesting instrument and a statement that the land is to be held on the same trusts as those of such instrument, together with the names of the trustees and of the person having power to appoint new trustees.

Finally, there are deeds of declaration. The principal vesting instrument and any subsidiary vesting deed must contain the names of the trustees of the settlement. It is the trustees alone that can give a discharge for purchase money. The name of the person having power to appoint new trustees will also be stated. On a change of trustees, either by a new appointment or by retirement, the deed of appointment of new trustees, or of retirement, is in relation to the settlement, that is, to the trust instrument. It is, therefore, not part of the title to the legal estate. But the change has a vital effect on the legal estate. It is consequently provided by s. 35 that a deed shall be executed, supplemental to the principal vesting instrument, containing a declaration as to the change that has been made. This document is, in subs. (3), called a deed of declaration, and it is by this title that it is usually known. If the appointment or discharge

was made by the court, the court is to direct who shall execute the deed of declaration (subs. (2)), and it is essential to remember to ask for this relief in applying for the appointment of a new trustee. In any other case the deed is to be executed by the person entitled to appoint new trustees (even if the change is by retirement only), the continuing and new trustees, and the outgoing trustee or trustees. I find in practice that deeds of declaration are often forgotten and a purchaser is offered an ordinary appointment of new trustees. He should insist on the deed of declaration.

LANDLORD AND TENANT NOTEBOOK

CONTROL: PERSONAL REPRESENTATIVES AS LANDLORDS

SOME time ago I had occasion to consider the plight of certain school managers who during the evacuation period had let the teacher's dwelling-house to an otherwise desirable person who, on the tenancy being determined, refused to give up possession. The managers then found that they could not get a teacher unless they could provide her with a house, and that their tenant, though willing to teach, was not qualified for the post. The validity of the tenancy, having regard to the Charitable Trusts Acts, had to be gone into; but apart from that it seemed to me that the landlords had no ground for recovering possession. *Sharpe* v. *Nicholls* [1945] K.B. 382 (C.A.), and the recent *Parker* v. *Rosenberg* (1946), 63 T.L.R. 52 (C.A.), have confirmed this view.

It will be remembered that when control was introduced, its scope was limited to low rental property which was seldom the subject-matter of any trust. The widening of the scope has not been accompanied by any changes designed to provide specially for beneficiaries of reversions who may desire to occupy the properties as residences. Thus it came about that in *Sharpe* v. *Nicholls* a somewhat curious situation arose when, at the hearing of the appeal, the court's attention was drawn to an alleged defect in the cause of action.

In the county court, the pleadings alleged that the two plaintiffs, who were his widow and her son, were the personal representatives of one A.S.; that as such they were the owners of the cottage claimed; that the cottage had been let to the defendant, and the tenancy duly determined; and that they claimed possession of the said premises which were required by the said V.B.S. (the widow) for her own occupation. All the defence did was to allege inability to obtain alternative accommodation, and hardship. The action was fought as if it were an ordinary claim by a landlord requiring possession for his own occupation under para. (*h*) of Sched. I to the Rent, etc., Restrictions Act, 1933, and by the time judgment was delivered it looks as if the learned judge had forgotten the existence of the son; for his order provided that, subject to a condition (held, on appeal, to be invalid on the *Neale* v. *Del Soto* principle) the defendant should give "the plaintiff" possession, etc. As MacKinnon, L.J., said when the case came before the Court of Appeal, the existence of the son must have been overlooked or tacitly admitted to have been immaterial; and it was not even known whether the deceased landlord had died intestate and whether the widow was entitled to the tenancy. But it was clear that the widow had not proved that she was "the landlord" when the summons was issued, and the court held that a beneficial interest was essential for the purposes of the Act.

In his judgment in the above case, Morton, L.J., while agreeing that one of several personal representatives could not satisfy the requirement, commented on the history of the definition of "landlord" in the Acts—as far as it went. For while the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (*g*) enacted that the expression included in relation to any dwelling-house any person, other than the tenant, who was or would but for that Act be entitled to possession of the dwelling-house, the 1933 Act contained a definition section which neither repeated nor replaced this definition. Nor was there any provision that the two statutes should be construed together.

These observations may have inspired those concerned for the defendant in *Parker* v. *Rosenberg*, in which the force employed in the combined operation was slightly differently constituted. The action was brought by the trustees of a will and a beneficiary under that will. The testatrix, who died in 1937, had left a house to the trustees upon trust for sale with power to postpone, and they were authorised to *permit* the other plaintiff (who was the testatrix's sister) either to have the use and enjoyment of the house pending sale or to receive the net rents and profits thereof. In 1941 the trustees let the house to the defendant, and a series of tenancies was finally concluded in 1946, when they gave notice to quit with the object of permitting the third plaintiff to reside in it.

The plaintiffs invoked the 1920 definition of "landlord"; the defence contended that it did not apply to 1939 control cases. But the court declined to consider whether it did or did not, holding that in any case the third plaintiff, who was merely to be permitted to reside in the house during her life, had no title. She could not, apart from the Acts, have brought an action to recover possession. The trustees could not bring themselves within para. (*h*) of Sched. I, so the action failed.

This may be considered one of those hard cases, the object of the testatrix being frustrated, and that of the Rent, etc., Restrictions Acts not served; the tenant, as did possibly the tenant in *Sharpe* v. *Nicholls* (which was remitted) benefited by the fortuitous circumstance that the interest in the reversion was the subject-matter of a trust. The fact that there is more than one plaintiff-landlord does not matter (*Baker* v. *Lewis* (1946), 62 T.L.R. (C.A.)); but for a trustee who is the reversioner and his *cestui que trust* who desires occupation as a residence to claim possession would be analagous to a joint application to be admitted a solicitor by one student who had passed in some subjects and another who had passed in the rest.

The position of a tenant who was both sole executrix and sole beneficiary of a protected (though not statutory) tenant was gone into in *Lawrence* v. *Hartwell* (1946), 62 T.L.R. 491 (C.A.), discussed in the "Notebook" of 7th September last, and we were given obiter authority for the proposition that an executor who was not also devisee would be protected as long as he resided in the dwelling-house.

The importance of distinguishing between trustee and beneficiary generally has been emphasised in a number of cases in which notices to quit or to determine had been given by the latter. The most recent authority is *Stait* v. *Fenner* [1912] 2 Ch. 504, shewing that only if agency can be established is such a notice valid, and disapproving an 1854 dictum of Channell, J., to the contrary.

TO-DAY AND YESTERDAY

April 14.—John Westlake was born at Lostwithiel in 1828, the only son of a woolstapler. He was called to the Bar in 1854, took silk and was elected a Bencher of Lincoln's Inn. In 1888 he succeeded Maine in the Whewell chair of international law at Cambridge, retaining it till 1908. He was equally eminent in private and public international law, and his "Treatise on Private International Law" was the first English attempt to systematise the subject. From 1900 to 1906 he was a member of the Hague International Court of Arbitration. He constantly strove to promote a greater interchange of thought between lawyers of different countries and to reconcile English and Continental traditions. He died at Chelsea on 14th April, 1913.

April 15.—In 1668 the system whereby the normal preliminary to becoming a Bencher of an Inn of Court was to hold a Reading there, was breaking down, and Benchers were appointed on a mere undertaking to read; thus at Gray's Inn on 15th April

Edmund Jones was called to the Bench and was "to read in his turn."

April 16.—Edmund Malone was born in Dublin on 16th April, 1704. He was called to the English Bar in 1730 and to the Irish Bar ten years later. He took silk in 1745 and was appointed second serjeant in 1759. He became a judge of the Common Pleas in Ireland in 1765 and died in 1774.

April 17.—On 17th April, 1778, Dr. Johnson met an old college friend who told him that he had long practised as a Chancery solicitor and now lived on a little 60 acres farm near Stevenage, going up to London to No. 6, Barnard's Inn twice a week. He said he loved to have hope realised, to see his grass and corn and trees growing. He also said he wished he had been a parson and had a good living and lived comfortably. Aside, he told Boswell that Johnson should have been a lawyer. When this was repeated to Johnson, he agreed, but Boswell protested: "There have been many very good judges. Suppose you had been Lord Chancellor, you would have delivered opinions with more extent of mind and in a more ornamented manner than perhaps any Chancellor ever did. But I believe causes have been as judiciously decided as you could have done." Again Johnson agreed.

April 18.—Next day, 18th April, Johnson and Boswell were discussing a recent trial for sedition. Johnson said: "They should set him in the pillory that he may be punished in a way that would disgrace him." Boswell mentioned a gentleman whom he thought not to have been disgraced by it. Johnson replied: "Aye, but he was, sir. He could not mouth and strut about as he used to do after having been there. People are not willing to ask a man to their tables who has stood in the pillory."

April 19.—On 19th April, 1777, the sessions ended at the Old Bailey when the following were condemned to death: a man who had stolen two watches in a dwelling-house; another who had committed a burglary in Oxford Street; another who had stolen banknotes, money, diamond rings and two gold watches from the house of a lady near Charing Cross; three men who had taken several silver spoons in the course of a burglary at Tottenham; another who had got into a dwelling-house in Lothbury with false keys and taken a parcel of needles and other goods; and finally, a woman who had uttered a forged promissory note.

April 20.—On 20th April, 1578, Edward Coke was called to the Bar by the Inner Temple. He became Chief Justice of the Common Pleas in 1606 and Chief Justice of the King's Bench in 1613. He profoundly influenced the development of English law both as a judge and as a legal author and achieved a vast reputation.

Preaching to the Judges

In the House of Lords recently Lord Jowitt said: "I have spent a considerable, though not an undue time listening to sermons . . . I should be very sorry to think that . . . it might be deemed that I thought that sermons had had their day." It is satisfactory to know that the keeper of the King's Conscience has prepared himself so well for the discharge of his duties that he is not inclined to deprecate the method he has adopted. It is all the more pleasing as the Lord Chancellor, unlike the common law judges, is under no official obligation to listen to sermons. By the time he has spent a few years going the circuits, a judge of the King's Bench should know plenty about the comparative quality of preachers. The late Lord Justice MacKinnon touching on this topic observed: "Between the best and the worst assize sermon that I have heard the difference is great but the average is of a uniform dullness," and he confessed: "I am afraid I do not always listen attentively throughout sermons." He recalled with approval an assize sermon preached in 1624, and afterwards printed with the pleasing title: "A Golden Trumpet to Rouse up a Drowsie Magistrate." He had an interesting personal reminiscence of the first assize service he ever attended. It was in 1894, and he was then an undergraduate at Oxford. The judge was Lord Chief Justice Coleridge and the preacher was Archbishop Benson. The background of the incident was that there had been a controversy between them as to precedence and that the difficulty had been diplomatically solved by their arriving separately, so that each was escorted alone to his place. The subject of the discourse was Humility and in it occurred the following significant passage: "May I not speak in this presence of the veneration with which England has ever regarded her great judges, on this account, that the love of justice has been continuously felt to be a passion with them, a high atmosphere in which egotism has shrunk and faded. 'I magnify my office' is the language of one who esteemed himself 'less than the least.' He is sacrificed to his work, not decorated with it."

A Sermon for Jeffreys

There is recorded a curious incident at Bedford in March, 1685, when Jeffreys was Lord Chief Justice. James II had been a month on the throne and the political situation was tense. The Sheriff's chaplain meant his discourse to be understood as an attack on popery, but he made the rather unhappy choice of adorning and illustrating it with the story of Shadrach, Mesach and Abednego, who were cast into a fiery furnace for refusing to bow down before an image in obedience to royal command, for Jeffreys, seizing the wrong end of the stick with his usual vigour, took the sermon for a covert expression of sympathy with resistance to royal authority. He rose from his seat in a passion, as if to drag the preacher from the pulpit, but Mr. Justice Wythens, who sat beside him, plucked him by the arm and restrained him. The object of his wrath was, however, quick enough to realise what had happened and hastened to shift the emphasis of his theme so that he "uttered all loyalty and obedience," and spoke so feelingly in praise of the divine right of kings that at the end the Chief Justice "was impatient (as fiery at the first) to embrace the preacher coming down the steps." He not only exacted from him a promise to publish his sermon but invited him to dinner into the bargain.

COUNTY COURT LETTER

Injury to Hand

In *Fern* v. *English Electric Co., Ltd.*, at Stafford County Court, the applicant's case was that he had been working as a slinger. On the 18th January, 1945, he slipped and his left hand was trapped in the jaws of a riveting machine. A hole was punched through his hand and the first finger was broken. He resumed work on the 29th October, 1945, but only as a storeman. On the 7th February, 1946, compensation ceased, on the ground that incapacity had ceased. On the 25th March, 1946, the applicant was discharged by consent of the National Service Officer. He was still partially incapacitated, and his earning capacity in the open labour market required to be assessed. The respondents' case was that incapacity had ceased. The applicant left work not through incapacity but because he was a bad storekeeper, and the firm asked to release him. His Honour Judge Tucker held that the applicant was still partially incapacitated, but he could do work, e.g., as a storekeeper, if he could get it. An award was made at the rate of 7s. 1d. per week for the period from the 29th October, 1945, to the 7th February, 1946, and the difference between his actual earnings with the respondents and his pre-accident wage of £5 9s. 5d. per week from the 7th February to the 25th March. The earning capacity was estimated at £4 per week from the 25th March, and an award was made at the rate of 14s. 8d. per week to the 19th April, and thereafter at 17s. 8d. per week, continuing, with costs.

POINTS IN PRACTICE

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Purchase in 1924 by Mother and Son as Tenants in Common in Equal Shares—Recent Death of Mother—Present Position

Q. In May, 1924, certain property was conveyed to A and B (mother and son) in equal shares as tenants in common. In November, 1943, A died and her estate has not yet been proved. B desires to sell and has contracted to sell. (1) Can B sell on his own, and what precedent should be used in the encyclopædia? (2) Must he wait for A's estate to be proved and the executor thereof join in? We believe B himself is the executor. (3) Can he appoint a co-trustee? If so, how?

A. (1) No. (2) No. (3) Under the Law of Property Act, 1925, Sched. I, Pt. IV, para. 1 (2), the legal estate on 1st January, 1926, vested in A and B upon the statutory trusts. B is the survivor of such trustees and should appoint a new trustee in the place of A, and he and the new trustee should effect the sale by way of the statutory trusts. The appointment of the new trustee should present no difficulty, being a simple appointment under the Trustee Act, 1925. We would observe that the proceeds of sale will belong as to a moiety to B, and as to the remainder to the personal representatives of A. B and the new trustee should consult the personal representatives of A before effecting a sale (they may not desire the particular or any sale), but a purchaser is not concerned to see that this has been done.

REVIEWS

Rent and Mortgage Interest Restrictions. By the Editors of "Law Notes." Twentieth Edition, 1946. London: "Law Notes" Publishing Office. 25s. net.

Those familiar with the numerous earlier editions of this useful work will find that the twentieth, which includes an exposition of the Furnished Houses (Rent Control) Act, 1946, in no way falls short of the high standard hitherto observed. The writers' method is, as it always has been, to discuss the numerous statutes (parts or the whole of some ten statutes are now in force) in chronological order, section by section. This, of course, entails much resorting to cross-references, and this task is discharged in a way which renders the most obscure provisions intelligible. The introductory sketch with which the work commences is necessarily a long one, but the reader who takes the trouble to peruse it will find his labours rewarded; for in the case of the Rent Acts perhaps more than in any other case appreciation of contents is impossible without reference to origin and history. Such statements as that the Acts owe their origin to house shortage, and many of their shortcomings to shortage of Parliamentary time, are not mere platitudes, and the practical advice given on p. 10 of the present edition is invaluable. As regards the Furnished Houses (Rent Control) Act, 1946, the notes made on the various provisions of this measure are extremely useful in emphasising differences in scope and possible overlapping, questions which may come before courts of law any day. The prediction on p. 298 that the freezing of rents by registration would in itself tend to afford security of tenure has perhaps not been fulfilled; and the suggestion in the note to s. 4 (1) (p. 297) that the Apportionment Act, 1870, might operate in the event of rent being reduced in the middle of a rent period, if made guardedly, might well have been developed at greater length, especially in connection with tenancies under which rent is made payable in advance. But these are matters of detail, and here again the reader will be well advised to refer for general guidance to the introductory sketch, which gives an excellent summary and short explanation of the new Act on pp. 31–32.

Mayne's Treatise on Damages. Eleventh Edition. By His Honour Judge W. G. Earengey, K.C., LL.D., B.A. 1946. London: Sweet & Maxwell, Ltd. 52s. 6d. net.

A new edition of Mayne on Damages is almost an event in legal history, especially when the interval since the last edition is now nearly twenty years. It is forty-four years since John D. Mayne jointly edited the seventh edition, and that was just about forty-seven years after the book was written in 1856. Such a book is a classic, obviously, and each edition raises the question anew of how much to preserve and how much to supersede. The present editor, Judge Earengey, carries on a great tradition in a worthy manner, and, to quote him, "the blue pencil has only been sparingly used." New matter such as the survival of causes of action, damages for loss or shortening of expectation of life under the Law Reform Act, 1934, and contributory negligence under the Law Reform Act, 1945, has added to the difficulty of producing this edition after a longer interval than ever before, an interval of unprecedented stresses and excitements when masses of learning were destroyed and there was every deterrent to research. Typical of much of the new editor's work is his critical examination (at p. 500) of the very interesting judgment in *Rook* v. *Fairrie* [1941] 1 K.B. 507, where it was held that whereas a jury can only express its views as to the grossness of a libel by a financial award of damages, the judge can publicly express his view in words, and where a judge is sitting without a jury something should be allowed as a deduction from the damages which a jury might have given, in view of the judge's power of vocal expression. The learned editor disapproves both in principle and in the public interest of this dual scale of damages. The section on "Damages for loss of expectation of life" admirably surveys the field from *Flint* v. *Lovell* [1935] 1 K.B. 354, to *Benham* v. *Gambling* [1941] A.C. 157, and beyond, and the survey leaves no room for criticism. It would be churlish to suggest, at such a feast of good things, that the learned editor might have given us more of his valuable opinions on the new Law Reform (Contributory Negligence) Act, 1945. He has set out its provisions, which was strictly all that he was called upon to do, and one can fully appreciate and understand the practical difficulties in the way of his expressing on statutory interpretation opinions which he might find quoted at him to-morrow. However, one may be permitted, knowing the learned editor's powers, to express one's wistful regret. This edition is a book "to have and to hold," for better understanding and advising, as a possession for a lifetime.

NOTES OF CASES

COURT OF APPEAL

Powell *v.* **Aberdale Cycle Co.**

Scott, Morton and Bucknill, L.JJ. 6th February, 1947

Master and servant—Workmen's compensation—Rupture—Full capacity with truss—Possibility of recurrence when truss not worn—Right to declaration of liability.

Appeal from a decision of Judge Done, given at Hertford County Court.

While the appellant workman was, during the war of 1939–45, employed by the respondent employers in duties which involved a certain amount of heavy work, he sustained a rupture whereby he was temporarily incapacitated. His own trade was that of an undertakers' assistant, which involved heavy work. The workman having claimed a declaration of liability on the footing that the rupture was an injury of a nature which might easily recur in the future, the judge refused it, holding that there was no reasonable probability of that recurrence. The workman appealed.

Scott, L.J., said that there was no evidence to show that during the times when the workman would *not* be wearing a truss there was absence of risk. On a common-sense view of the particular injury which the workman had suffered, namely, the hernia, he (his lordship) was satisfied that the judge must have misdirected himself in law in coming to the conclusion that, merely because the evidence, which he accepted, was to the effect that, *with* an efficient truss, there was an absence of any such probability of aggravation, he was entitled to say that there was no reasonable probability of the injury's again causing trouble. On that question the case ought to go back for re-trial. A truss might break, or its strap might give way; and in either case there might be a risk of injury. During each twenty-four hours, when the workman went to bed and probably did not wear his truss, he might, quite unconsciously, do something which without a truss was dangerous. His having no declaration of liability would mean that if and when such an untoward event happened he would have no right to apply for compensation to the employer in whose service he had received the original injury. Unless the judge were satisfied on the re-trial, with new evidence, that there was no appreciable risk in the future, there must necessarily be that degree of reasonable probability which the courts, including the House of Lords, had contemplated as entitling a workman to the protection of a declaration of liability. A declaration of liability was a very valuable protection given to the workman by the Workmen's Compensation Acts. The appeal would be allowed.

Morton, L.J., dissenting, said that in order to be entitled to a declaration of liability the workman must prove that there was a reasonable probability that he would in the future be incapacitated for work by reason of the accident. His lordship referred to *Marshall* v. *Clayton & Shuttleworth, Ltd.* [1919] 1 K.B. 509; 63 Sol. J. 265. The county court judge might have taken the view, on the evidence before him, that the case was one which justified a declaration of liability. He had not, however, taken that view. Having heard all the evidence, he had refused to grant such a declaration. There was no indication that he had misdirected himself or failed to consider any relevant matter in deciding the question of fact involved. On the evidence as a whole he was justified in coming to the conclusion that the workman had not discharged the burden of proof upon him. He (his lordship) saw no good reason for remitting the matter for reconsideration.

Bucknill, L.J., agreeing that the appeal should be allowed, said that, all the evidence being to the effect that while the workman wore an efficient truss he was able to do his work, the inevitable inference was that, without a truss, he was unfit to do that work. The judge seemed to have treated the case as that of a workman who had permanently affixed to him a truss which made him efficient. That was not so. A truss was not a growth; it had to be put on and taken off; and for a variety of reasons might be left off. On all those matters the judgment threw no light.

Counsel: *C. J. A. Doughty; R. M. Everett.*

Solicitors: *J. F. W. Harrison; William Charles Crocker.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Kimber *v.* **William Willett, Ltd.**

Oaksey, Tucker and Cohen, L.JJ. 7th February, 1947

Contract—Carpet removed for cleaning—Carpet left with dangerous loose edge—Implied obligation on cleaners.

Appeal from a decision of Henn Collins, J.

The plaintiff employed the defendant company, under a verbal contract, to take up and clean the carpet in the dining room of her

flat. That carpet was, in the doorway of the dining room, attached by sewing to he tongue of the hall carpet which c me through the doorway. The rest of the hall carpet was tacked down in the hall, there being ordinary floor boards underneath it. The company's sub-contractor or workman cut away the stitches and removed the dining room carpet, leaving, without tacking it down, the tongue of the hall carpet which protruded through the doorway. Evidence was given that it lay flat in that condition. An Oriental carpet was, on the plaintiff's instructions, put down in the dining room, and, the judge found, it lay close against the tongue of the hall carpet. The plaintiff's case was that it was an implied term of the contract that the work should be done in a workmanlike and safe manner and that in fact it was not done in such a manner, the tongue of the hall carpet being left in an unsafe condition. On 30th September, 1944, that was, about a fortnight after the dining-room carpet had been taken up, the plaintiff, who had a tray in her hand at the time, caught her foot in the tongue of the hall carpet, fell and sustained serious injuries. Henn Collins, J., held that the implied term relied on by the plaintiff ought to be implied in such a contract, made between an ordinary householder, who was not an expert in carpet-laying, and a firm of expert carpet-layers; that that implied term had been broken; and that the result of that breach was the damage which the plaintiff has suffered. He accordingly awarded her £500 damages. The company appealed.

OAKSEY, L.J., said that, although the case was one of some difficulty and nicety, he was of opinion that it was one in which that court ought not to disturb the findings of the trial judge. He thought the judge right in law with regard to the implied term in the contract in question, and that it was open to him on the evidence to find that the implied term had been broken. The workman who took up the dining-room carpet was clearly faced with the problem of what to do with the loose edge of the hall carpet. The reasonable and safe thing to do would have been to tack it down. A carpet like that was different from a rug which was not tacked down at all. This carpet was tacked down all over the hall except at the place left loose, so that anyone tripping on the loose edge would meet all the resistance of the nailed carpet, the effect being quite different from that of catching the foot in a movable carpet. It had also been argued that the damage did not flow from the breach, if any. In his (his lordship's) opinion, damage such as that in question did, or might, arise naturally in the usual course of things from such a breach. The crux of the whole matter was that the hall carpet had been sewn to the dining room carpet. That in itself was an indication that it was not satisfactory to leave the edge of the hall carpet loose. The appeal should be dismissed.

TUCKER, L.J., agreeing that the appeal should be dismissed, said that he thought that the implied obligation as pleaded in the statement of claim was too wide. The obligation was to do the work in a proper and workmanlike manner, which had not been done. He was not deciding that it was always unsafe to leave a carpet flat and untacked. The circumstances here were peculiar in that a tongue of the hall carpet projected through the dining-room doorway.

COHEN, L.J., agreed.

COUNSEL: *Levy*, K.C., and *T. F. Davis; Vick*, K.C., and *Edgedale*.

SOLICITORS: *Bulcraig & Davis; William Charles Crocker*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Dunn *v.* A. G. Lockwood & Co.

Oaksey and Morton, L.JJ. 14th February, 1947

Master and servant — Workmen's compensation — Workman permitted to take train making him late at work—Corresponding duty to go from station to work without delay—Accident arising in the course of employment—Workmen's Compensation Act, 1925 (15 & 16 *Geo.* 5, *c.* 84), *s.* 1 (1).

Appeal from a decision of Judge Clements, given at Margate County Court.

The appellant workman was engaged by the respondent employers, a firm of builders and decorators, as a plasterer. He lived at Whitstable and the employers carried on their business at Margate. The agreed terms of employment were that the workman might, though he was not obliged to, travel from Whitstable to Margate by the 7.40 a.m. train, arriving at Margate at 8.15, but was to be paid from 8 o'clock. Having arrived at Margate Station, he was going to his work by the most expeditious route when he slipped and was injured. The county court judge, on his claim to compensation, held that that accident did not arise "out of and in the course of" his employment, within the meaning of s. 1 (1) of the Workmen's Compensation Act, 1925. The workman appealed.

OAKSEY, L.J., said that in *Allen* v. *Siddons* (1932), 25 B.W.C.C. 350, the workman was employed on the terms that he should be paid from 7 o'clock in the morning, and that his hours began at 7 o'clock in the morning. In practice, however, he was only bound to be at his work at 7.30 in the morning, and he could get there in any way he pleased. In fact he went by motorcycle and was injured. His claim was held to fail, in accordance with the principle established by a large number of cases that a workman was not, as a general rule, in the course of his employment when he was on his way to work. His lordship referred to the speech of Lord Russell of Killowen in *Alderman* v. *Great Western Railway Company* [1937] A.C. 454, at p. 461, and said that the decision in *Allen* v. *Siddons*, *supra*, was in accord with the principle there enunciated. The workman there was only on his way to his work and was not performing any contractual obligation to the employer in going to it. On the other hand, in *Blee* v. *London & North Eastern Railway Company* [1938] A.C. 126, in which that dictum of Lord Russell of Killowen was cited, the facts were that a workman in the service of a railway company was employed on the terms that, after he had done his daily work, he might be called out on any emergency for which the railway company desired his services. He was going to an emergency as quickly as he could when he was knocked down and injured. The going to such an emergency as quickly as possible was in the course of his employment. To adopt the words of Lord Russell of Killowen, another element was present involving the discharge of a contractual duty to the employer. The present case fell within the principle of *Blee* v. *London and North Eastern Railway Company*, *supra*, and the principle laid down was that an accident was in the course of the workman's employment if at the time he was performing a duty which he owed to his employer by virtue of the contract of employment. There was here an element present involving the discharge of a contractual duty to the employer, for the permission to use the 7.40 train although the workman was to be paid from 8 o'clock imposed on him the obligation to go as quickly as possible to his work by the most expeditious route after he had arrived at Margate at 8.15, and it was in the performance of that duty that he was injured. That distinguished the case from *Allen* v. *Siddons*, *supra*, where the workman's only duty was to be at his work at 7.30, although he was paid from 7 o'clock. He had no duty to proceed by any particular route, or at any particular speed. Therefore, at the time when he was injured, there was no contractual obligation on him. The appeal must be allowed.

MORTON, L.J., agreed.

COUNSEL: *Crispin* and *Coningsby; Goldie*.

SOLICITORS: *Culross & Co.; L. Bingham & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

M.W. Investments, Ltd. *v.* Kilburn Envoy, Ltd.

Lord Greene, M.R., and Cohen and Asquith, L.JJ.
24th March, 1947

Landlord and tenant—Lease for three years or for duration of hostilities—Option to renew for seven years—Whether option valid—Validation of War-Time Leases Act, 1944 (7 & 8 *Geo.* 6, *c.* 34), *s.* 1 (1), (3).

Appeal from a decision of Vaisey, J. (90 SOL. J. 600).

By a lease dated the 10th February, 1942, the plaintiff company demised to the defendant company a cinema at Kilburn "for the term of three years from the 5th January, 1942, or for a period covering the duration of hostilities between Great Britain and Germany and Italy, and twelve months after the date of the termination of hostilities, whichever period shall be the longer, subject to the extension of such period as provided by cl. 5 (4) hereof." Clause 5 (4) provided: "If the term of this lease shall not extend for a period of seven years from the said 5th January, 1942, and the lessees shall be desirous of continuing the term for a full period of seven years from such date and of such desire shall give not less than three calendar months' notice in writing prior to the expiration of the term granted by this lease then the lessor will grant a further term up to the 5th January, 1949," subject to the provisions as to rent therein contained. By a notice dated 4th December, 1945, the defendants, the lessees, purported to exercise the option conferred by cl. 5 (4). Doubts having arisen as to whether the option was then exercisable and as to how the lease was to be construed having regard to the provisions of the Validation of War-Time Leases Act, 1944, the plaintiffs by this summons asked whether the option had been validly exercised. Vaisey, J., held that, apart from the Act of 1944, no effect could be given to cl. 5 (4). The combined operation of the Act and the lease did not make the option good. The defendants appealed.

The Validation of War-Time Leases Act, 1944, provides by s. 1 (1): "... any agreement ... which purports to grant or provide for the grant of a tenancy for the duration of the war shall have effect as if it granted ... a tenancy for a term of ten years, subject to a right exercisable either by the landlord or tenant to determine the tenancy, if the war ends before the expiration of that term, by at least one calendar month's notice in writing given after the end of the war." Section 3 (3) provides that: "Nothing in the said s. 1 shall affect any provision of an agreement to which that section applies, being a provision which does not relate to the duration of the tenancy ...." Section 7 (3) provides that the Act, subject to the provisions of s. 3, is to be deemed to have effect in relation to any agreement, as from the date on which the agreement was entered into.

LORD GREENE, M.R., said that the effect of the Act was that the lease was to have effect as if it granted a tenancy for a term of ten years, determinable in the manner stated. The statute was not limited in its operation to a mere alteration of the habendum. It provided that the lease—that was, the whole lease—was to have effect as if the habendum had been of the kind mentioned in s. 1. He would have thought that if in the habendum there had been inserted for the contractual term the statutory term, the construction of cl. 5 (4) would not have been difficult. The result would have been that, if the lease were brought to an end by notice within the seven years, the option would be a valid one exercisable by the tenant. So far as the alteration of the habendum required a modification of words in cl. 5 (4) those words must be modified. The option clause was a provision which related to the duration of the tenancy within s. 3 (3). He construed s. 3 (3) in this way: s. 1 was not to have an operation in respect of provisions of the lease which were not conditioned by or affected by the habendum. These were to remain as they were, valid or invalid; but once a provision was found which was conditioned by the habendum, then the section contemplated that s. 1 in such a case was to have its full effect. There was nothing to prevent an option conditional on a future event being exercised at once, although it would have no effect unless the event happened. On the 4th December, 1945, the defendants gave notice exercising their option. The plaintiffs gave the month's notice required by the statute on the 31st October, 1946. The "expiration of the term" within the option was the date on which the plaintiffs' notice took effect. That notice took the place under the statute of the end of the war. The result was that the defendants had given not less than three calendar months' notice prior to the expiration of the term, which took place on the expiration of the landlord's notice. The "expiration of the term" in the option must be construed as meaning the actual ending of the term in the events which happened. The appeal must be allowed.

COHEN and ASQUITH, L.JJ., agreed in allowing the appeal.

COUNSEL: *Andrew Clark*, K.C., and *The Hon. Charles Russell; Neville Gray*, K.C., and *A. Mulligan*.

SOLICITORS: *J. G. Bosman, Robinson & Co.; Harringtons.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

Hudson *v.* Hudson

Lord Merriman, P., and Jones, J. 22nd January, 1947

Husband and wife—Persistent cruelty—Cause of complaint arising in different jurisdictions—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 *Vict. c.* 39), *s.* 4.

Appeal from a decision of Otley Justices.

On the 4th September, 1946, the respondent wife left her husband, the appellant, he having committed physical assaults on her on the two preceding days. The matrimonial home was in Scunthorpe. The wife, on leaving, took work as a barmaid at Ilkley, in the Otley Petty Sessional Division. The husband's ill-treatment of his wife centred round his allegations, negatived by the justices, of a guilty association between her and a young man, a friend of her sons. In October, 1946, he went to see his wife, accompanied by her brother, ostensibly in order to induce her to return to him, but also, as he admitted, because he thought that he might find the young man at the same place. He in fact saw him there, and created a scene necessitating the intervention of the police. Otley justices, having found the charge of persistent cruelty made out, made a maintenance order against the husband of £2 a week. He now appealed, contending that the justices had acted without jurisdiction.

LORD MERRIMAN, P., said that the husband contended that no part of the persistent cruelty alleged by the wife had occurred at Ilkley in the Otley Petty Sessional Division, the incident there being outside the alleged course of cruelty and a mere exhibition of bad manners, and that the Otley justices accordingly had no jurisdiction to entertain the proceedings brought by the wife, since, by s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, the cause of complaint must have arisen wholly or partly in their division. There was abundant evidence for the justices' finding of persistent cruelty. As for the jurisdiction point, in the case of a course of persistent cruelty it was necessary to distinguish between the thing to be proved and the things which constituted evidence proving it. A given incident might, however, be part of both the thing to be proved and a thing proving it, for example, an outrageous assault. At least two acts were necessary to establish persistent cruelty. Where there was a course of conduct calculated to break the wife's spirit, it was the cumulative effect of the unkindness which ultimately became cruelty and later persistent cruelty. Each item in the heap, although not of itself sufficient to amount to cruelty, was not only evidence of the thing which ultimately became cruelty, but was in itself part of the thing to be proved, namely, persistent cruelty. Here there was a course of cruelty containing as its elements gross physical violence and continuous abuse and unkindness resulting from an intolerable form of jealousy. Up to the moment when the wife left home there was plainly nothing in the husband's course of conduct to give jurisdiction to the Otley justices. It was contended that his conduct at Ilkley was entirely extraneous to that course of conduct; but the evidence was that the scene created there was due to the same insensate jealousy as had underlain his ill-treatment of his wife before she left home. It was the correct inference that the husband had in fact gone to see his wife at Ilkley spoiling for a row, to use a colloquialism, with the young man. It therefore followed that the cause of complaint had arisen within the justices' jurisdiction, and the appeal failed.

COUNSEL: *Hogg; Herd.*

SOLICITORS: *Joynson-Hicks & Co.*, for *R. A. C. Symes, & Co.*, Scunthorpe; *Jaques & Co.*, for *Eric Wolfe*, Otley.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

ROYAL ASSENT

The following Bill received the Royal Assent on Wednesday, 2nd April, 1947:—

CIVIC RESTAURANTS.

HOUSE OF LORDS

Read First Time:—

TRAFALGAR ESTATES BILL [H.C.] [2nd April.

HOUSE OF COMMONS

Read First Time:—

LUTON CORPORATION BILL [H.C.] [3rd April.

To confer further powers upon the Mayor, Aldermen and Burgesses of the Borough of Luton with reference to the repairing of private streets; and for other purposes.

Read Second Time:—

FORTH ROAD BRIDGE ORDER CONFIRMATION BILL [H.C.] [3rd April.

Read Third Time:—

NAVAL FORCES (ENFORCEMENT OF MAINTENANCE LIABILITIES) BILL [H.C.] [2nd April.

TREATIES OF PEACE (ITALY, ROUMANIA, BULGARIA, HUNGARY AND FINLAND) BILL [H.C.] [2nd April.

QUESTIONS TO MINISTERS

PATERNITY ORDERS (CHILDREN'S ALLOWANCES)

Mr. GARRY ALLIGHAN asked the Secretary of State for the Home Department whether a circular has been sent to magistrates about the effect on maintenance allowances under paternity orders of the fact that children's allowances are now in force; and whether he will make a statement with respect to the policy governing the relation of children's allowances to such orders.

Mr. EDE: A circular on this subject was issued to clerks to justices on 31st July last, and I am having a copy placed in the library.

Mr. ALLIGHAN: As the Home Secretary appears anxious that this circular should be taken notice of and implemented, will he insist that this is done, because I have evidence that this has not been done?

Mr. EDE: If the hon. member can put me in touch with the cases where it is alleged that the circular is not being followed, I will take action. [3rd April.

DRIVING DISQUALIFICATION

Mrs. MIDDLETON asked the Secretary of State for the Home Department whether he is aware that s. 35 of the Road Traffic Act, 1930, imposes disqualification from driving for twelve months unless the court for special reasons thinks fit to order otherwise; that magistrates have, for the last seventeen years, been treating circumstances of great personal hardship as a special reason entitling them to order no disqualification; that, since the recent judgment of the Divisional Court in *Whittall* v. *Kirby*, they cannot do this, even if disqualification will deprive a man of his livelihood; and whether, in these circumstances, he will consider introducing a short amending Bill to restore to the magistrates discretion in these cases.

Mr. EDE: I am not aware of any ground for the suggestion that all courts throughout the country have been adopting a different interpretation of the law from that which has now been authoritatively stated in the judgment to which my hon. friend refers. Many courts have acted upon a correct view of the law. The question of amending the Road Traffic Acts is one for my right hon. friend the Minister of Transport, and I understand that he sees no reason to consider amendment of the provisions which Parliament in the interest of road safety saw fit to enact in 1930.

Mrs. MIDDLETON: Is my right hon. friend aware that that is a discretion which everyone thought that magistrates had under the 1930 Act until quite recently; and will he do what Parliament in those days certainly intended should be done?

Mr. EDE: I was a member of the House in 1930, and I am quite sure that, at that time, the House was appalled by the amount of death and injury which was caused on the roads by people who drove when they were under the influence of drink. In fact, a part of the difficulty was that under the previous requirement a man had to be drunk before he was convicted, and the doctors said that they did not know what "drunk" was. It was a colloquial term, and, therefore, the phrase in the Act was adopted to make quite certain that people should not be driving on the roads with these lethal weapons, when they were not in a fit state to control them. [3rd April.

CHILD ADOPTION

Commander NOBLE asked the Secretary of State for the Home Department whether he will consider modifying the existing regulations which require parents within the Empire wishing to adopt a child from this country to come and reside here first.

Mr. EDE: A court is required, before making an adoption order under the Adoption of Children Act, 1926, to be satisfied that it will be for the welfare of the child. As generally it would be impracticable for a court to make adequate and reliable inquiries in respect of applicants living abroad, the Act provides that adoption orders, which confer on adopters irrevocable rights of parenthood, should be made only in favour of persons who are resident and domiciled in this country. British children may, however, go abroad for adoption by British subjects provided that a licence is granted under s. 11 of the Adoption of Children (Regulation) Act, 1939. Legalisation of the adoption then depends on the law in force in the prospective adopter's country of domicile.

Commander NOBLE: Is it in fact the case that a child may be adopted within the Empire without prospective parents having to come to this country?

Mr. EDE: Yes, but certain proceedings have to be conducted before the Chief Magistrate at Bow Street before the child is allowed to emigrate. [3rd April.

RENT TRIBUNALS

Mr. SHEPHARD asked the Minister of Health how many cases have been dealt with by the Furnished Houses Rent Tribunals during 1946; and in how many of such cases was the rent reduced or increased.

Mr. BEVAN: The number of cases referred was 4,819, of which 986 were withdrawn or found incompetent and 1,588 were pending at the end of the year. Decisions were reached in the remaining 2,245, reductions in rent being made in 1,793 and increases in nine. [3rd April.

SCOTLAND

SHOPS (SECURITY OF TENURE)

Mr. CARMICHAEL asked the Secretary of State for Scotland the names of the members of the committee he has appointed to inquire into the threat to shopkeepers in Glasgow and other parts of Scotland of greatly increased rents, or eviction from their premises if they refuse to purchase them; and, in view of the urgency of steps being taken to prevent the evictions before the May term, when the committee is likely to hold its first meeting.

Mr. WESTWOOD: The Chairman of the Committee is Professor T. M. Taylor, C.B.E., K.D., Sheriff of Renfrew and Argyll, and I will circulate the names of the Committee in the Official Report. The letters of appointment were issued on 29th March and I understand that consultations are now proceeding with a view to an early meeting of the Committee.

Following are the names :—

Mr. J. A. M. Collier, J.P., Vice-President of the Scottish Ironmongers Federation.

Mr. H. J. Dryer, O.B.E., Secretary of the Scottish Federation of Grocers and Provision Merchants Associations.

Mr. D. McDonald, City Assessor, Edinburgh.

Mr. R. Murray MacGregor, B.L., Secretary of the National Federation of Property Owners and Factors of Scotland.

Mrs. Jean Roberts, member of Glasgow Town Council.

Mr. Maurice Shinwell, General Secretary of the Scottish Retail Traders Association.

Mr. John Taylor, J.P., Secretary of the Scottish Organisation of the Labour Party. [3rd April.

REQUISITIONED PROPERTY (REPAIR OBLIGATIONS)

Colonel CLARKE asked the Secretary of State for War whether his Department have the obligations of a repairing lease lessee as regards matters such as necessary outside painting and repairs to pipes damaged by frost.

Mr. BELLINGER: In the case of property held on requisition under Defence Regulations, there is neither a covenant by the Department nor a statutory obligation to do any work of maintenance. The obligations are to pay compensation under the Compensation (Defence) Act, 1939, which, by s. 2 (1) (*b*) of the Act, is limited to a sum equal to the cost of making good any damage which may have occurred during the period for which possession is retained, no account being taken of fair wear and tear. [3rd April.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 590. **Clearing Office** (Spain) Amendment Order. March 31.
No. 483. **Designs Rules.** March 17. Erratum.
No. 617. **Housing** (Declaration of Unfitness) Regulations. April 1.
No. 582. **Income Tax** (Employments) (No. 5) Regulations. March 29.
No. 547. **Increase of Pensions** (General) Regulations. March 26.
No. 570. **National Insurance** (Expenses of Administration) Regulations. March 28.
No. 542. National Insurance (Increase of Contributory Pensions) Amendment Regulations (No. 2). March 26.
No. 571. National Insurance (Pensions Accounts) Regulations. March 28.
No. 526. **Non-Contributory Old Age Pensions** Regulations. March 31.
No. 484. **Patents Rules.** March 17. Erratum.
No. 611. **Polish Forces** (Application of 23 Geo. 5, c. 6) Order in Council. April 2.
No. 610. Polish Forces (Penal Arrangements) Order in Council. April 2.
No. 628. **Regulation of Payments** (Spanish Monetary Area) Order. April 3.
No. 573. **Statutory Orders** (Special Procedure) (Scale of Costs) (Scotland) Order. March 27.
No. 574. **Temperance** (Scotland) Act Scale of Expenses Order. March 28.
No. 613. **Water** (Interest on Deposits) Regulations. April 1.

NOTES AND NEWS

Honours and Appointments

The King has approved the following appointments :—

The Right Hon. JOHN CLARKE MACDERMOTT, a Justice of the High Court of Justice, Northern Ireland, as a Lord of Appeal in Ordinary in succession to Lord Wright, who has resigned.

Sir FREDERIC JOHN WROTTESLEY and Sir FRANCIS RAYMOND EVERSHED, Justices of the High Court of Justice, as Lords Justices of Appeal.

Mr. FRED EILLS PRITCHARD, K.C., and Mr. DAVID LLEWELLYN JENKINS, K.C., as Justices of the High Court of Justice. Mr. Justice Pritchard and Mr. Justice Jenkins will, in accordance

with the Lord Chancellor's direction, be attached to the King's Bench Division and Chancery Division respectively.

The following appointments as Official Receivers are announced: Mr. A. T. CHEEK for Northampton, Bedford and Luton, and also for Cambridge, Peterborough and King's Lynn; Mr. G. F. MORRIS, for Bradford, Dewsbury, Halifax and Huddersfield, and also Official Receiver attached to Leeds and Wakefield County Courts; and Mr. A. M. LANDER for Canterbury, Rochester and Maidstone.

Mr. SYDNEY LIPSCOMBE ELBORNE has been appointed Chairman of Huntingdonshire Quarter Sessions. He was called by the Inner Temple in 1919.

Mr. ARCHIE PELLOW MARSHALL has been appointed Deputy Chairman of Northamptonshire Quarter Sessions. He was called by Gray's Inn in 1925.

Notes

The Recorder of Stamford has fixed the next Quarter Sessions for the Borough of Stamford to be held on Wednesday, 7th May, at 11.30 a.m.

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26, Portland Place, W.1, on Thursday, 24th April, 1947, at 8.15 p.m., when a paper will be read by David R. Mace, M.A., B.Sc., Ph.D., on "Marriage breakdown and Divorce" (Some Aspects of the Denning Report).

The Union Society of London, meeting in the Barristers' Refreshment Room, Lincoln's Inn, at 8 p.m., will debate the following subjects in April, 1947: Wednesday, 23rd April, "That, unlike St. George, we lack the spirit to meet the challenge of our time"; Wednesday, 30th April, "That this House approves the Budget proposals."

At the seventy-first annual general meeting of the Bradford Incorporated Law Society, Mr. C. S. Reddihough (of Messrs. Last and Reddihough) was appointed President for the year 1947, Mr. A. R. B. Priddin (of Messrs. Cawthron & Priddin) and Mr. C. T. Law-Green (of Messrs. Mumford, Thompson & Bird), were appointed Vice-Presidents, and Mr. H. B. Connell (of Messrs. Wilfrid Dunn & Connell), and Mr. Stanley Ackroyd (of Messrs. Gaunt, Foster & Bottomley) were appointed joint Honorary Secretaries.

Wills and Bequests

Mr. S. H. Clay, solicitor, of Retford, Nottinghamshire, left £161,974. He left £3,000 to East Retford Corporation for playing fields or a park; £5,000 to Tettenhall College, for two annual scholarships to Oxford; and £1,000 each to the Solicitors' Benevolent Association, Victoria Hospital, Worksop, Dewsbury and District Infirmary, and Ebenezer Congregational Church, Dewsbury.

Mr. C. S. Crosse, solicitor and member of City of London Corporation, of Henley-on-Thames, left £23,425, with net personalty £17,276.

Mr. E. Field, retired solicitor, of Bromley, Kent, left £60,009.

Mr. G. H. Willis, solicitor, of Chancery Lane, left £77,056, with net personalty £36,310.

COURT PAPERS

SUPREME COURT OF JUDICATURE

EASTER SITTINGS, 1947

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court I.	Mr. Justice Vaisey.
Mon., April 21	Mr. Reader	Mr. Andrews	Mr. Jones
Tues., ,, 22	Hay	Jones	Reader
Wed., ,, 23	Farr	Reader	Hay
Thurs., ,, 24	Blaker	Hay	Farr
Fri., ,, 25	Andrews	Farr	Blaker
Sat., ,, 26	Jones	Blaker	Andrews

	Group A.		Group B.	
	Mr. Justice Roxburgh *Witness.*	Mr. Justice Wynn Parry *Non-Witness.*	Mr. Justice Evershed *Non-Witness.*	Mr. Justice Romer *Witness.*
Mon., April 21	Mr. Farr	Mr. Blaker	Mr. Hay	Mr. Reader
Tues., ,, 22	Blaker	Andrews	Farr	Hay
Wed., ,, 23	Andrews	Jones	Blaker	Farr
Thurs., ,, 24	Jones	Reader	Andrews	Blaker
Fri., ,, 25	Reader	Hay	Jones	Andrews
Sat., ,, 26	Hay	Farr	Reader	Jones

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price April 14 1947	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	114⅛	3 9 10	2 5 7
Consols 2½%	JAJO	96	2 12 1	—
War Loan 3% 1955–59	AO	106⅛	2 16 4	2 2 0
War Loan 3½% 1952 or after	JD	107	3 5 5	2 2 3
Funding 4% Loan 1960–90	MN	117⅛xd	3 8 1	2 8 4
Funding 3% Loan 1959–69	AO	106⅛	2 16 4	2 7 4
Funding 2¾% Loan 1952–57	JD	105	2 12 5	1 13 7
Funding 2½% Loan 1956–61	AO	102⅛	2 8 9	2 3 9
Victory 4% Loan Av. life 18 years	MS	119	3 7 3	2 13 1
Conversion 3½% Loan 1961 or after	AO	111⅛	3 2 9	2 10 4
National Defence Loan 3% 1954–58	JJ	106⅛	2 16 4	2 8 8
National War Bonds 2½% 1952–54	MS	103	2 8 7	1 18 9
Savings Bonds 3% 1955–65	FA	106⅛	2 16 4	2 2 2
Savings Bonds 3% 1960–70	MS	106⅛	2 16 4	2 8 2
Treasury 3%, 1966 or after	AO	106	2 16 7	2 11 10
Treasury 2½%, 1975 or after	AO	96⅛	2 11 10	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	101	2 19 5	—
Guaranteed 2½% Stock (Irish Land Act, 1903)	JJ	101	2 14 5	—
Redemption 3% 1986–96	AO	111⅛	2 13 10	2 10 5
Sudan 4½% 1939–73 Av. life 16 years	FA	122⅛	3 13 6	2 14 10
Sudan 4% 1974 Red. in part after 1950	MN	115xd	3 9 7	—
Tanganyika 4% Guaranteed 1951–71	FA	105	3 16 2	2 13 4
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	101⅛	2 9 3	2 0 0
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	111	3 12 1	2 7 3
Australia (Commonw'h) 3½% 1964–74	JJ	109	2 19 8	2 12 1
*Australia (Commonw'h) 3% 1955–58	AO	104	2 17 8	2 9 5
†Nigeria 4% 1963	AO	118⅛	3 7 6	2 11 6
*Queensland 3½% 1950–70	JJ	104	3 7 4	—
Southern Rhodesia 3½% 1961–66	JJ	112⅛	3 2 3	2 8 10
Trinidad 3% 1965–70	AO	106	2 16 7	2 11 3
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	100⅛	2 19 8	—
*Leeds 3½% 1958–62	JJ	107	3 0 9	2 10 2
*Liverpool 3% 1954–64	MN	103xd	2 18 3	2 10 6
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	122⅛	2 17 2	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	100⅛	2 19 8	—
*London County 3½% 1954–59	FA	108⅛	3 4 6	2 5 1
*Manchester 3% 1941 or after	FA	100	3 0 0	—
*Manchester 3% 1958–63	AO	105	2 17 2	2 8 7
Met. Water Board "A" 1963–2003	AO	103⅛	2 18 0	2 14 7
* Do. do. 3% "B" 1934–2003	MS	101	2 19 5	—
* Do. do. 3% "E" 1953–73	JJ	103	2 18 3	2 8 2
Middlesex C.C. 3% 1961–66	MS	106	2 16 7	2 9 10
*Newcastle 3% Consolidated 1957	MS	105	2 17 2	2 8 7
Nottingham 3% Irredeemable	MN	107xd	2 16 1	—
Sheffield Corporation 3½% 1968	JJ	115	3 0 10	2 11 4
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	124⅛	3 4 3	—
Gt. Western Rly. 4½% Debenture	JJ	125⅛	3 11 9	—
Gt. Western Rly. 5% Debenture	JJ	137⅛	3 12 9	—
Gt. Western Rly. 5% Rent Charge	FA	134⅛	3 14 4	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	132⅛	3 15 6	—
Gt. Western Rly. 5% Preference	MA	120⅛	4 3 0	—

* Not available to Trustees over par.
† Not available to Trustees over 115.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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